Affirmed and Opinion Filed April 4, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-00642-CV

BIGELOW ARIZONA TX-344, LIMITED PARTNERSHIP D/B/A SUITES OF AMERICA, TX-344 AND/OR BUDGET SUITES OF AMERICA, Appellant
V.
TOWN OF ADDISON, Appellee

On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-09630

MEMORANDUM OPINION

Before Justices Goldstein and Garcia[1]
Opinion by Justice Goldstein

Appellant Bigelow Arizona TX-344 (Bigelow) appeals the trial court's order granting appellee Town of Addison's plea to the jurisdiction on Bigelow's claims for inverse condemnation and declaratory judgment. In two issues, Bigelow asserts that (1) the trial court erred in granting the plea to the jurisdiction, and (2) Bigelow adequately pleaded its claims. We affirm.

[1] The Honorable Justice Amanda Reichek was originally a member of this panel but did not participate in this opinion because her term expired on December 31, 2024.

BACKGROUND

In 1992, the Town established an Urban Center for "Old Addison" as part of its Comprehensive Plan. In 1995, the Town amended certain definitions of its Comprehensive Zoning Ordinance No. 66, to implement plans and regulations for the Urban Center District.[2]

In 1998 the Town approved a special use permit, SUP 098-048, for Bigelow to operate a hotel/motel[3] under the trade name, Suites of America.[4] Thereafter, Bigelow made its rooms available for long term rentals that exceeded thirty days, and for at least the last ten years, operated as an extended stay hotel—with approximately 95% occupancy for longer than 30 days.

In 2015 the Town's zoning code was amended to change definition of hotel. On July 28, 2016, the Town advised Bigelow that the "development does not comply with current definition and is considered legal non-conforming."[5]

[2] Ordinance No. 95-019 provided definitions for apartment, apartment house, apartment hotel, hotel or motel, housing project, and lodging house, all without temporal restrictions.

[3] Hotel or Motel was defined in Ordinance No. O95-019 as "a building or arrangement of buildings designed and occupied as a *temporary abiding place* for guests who are lodged with or without meals, in which the rooms are usually occupied singly or in suites of two rooms for hire" (emphasis added).

[4] Bigelow alleged in the trial court that it intended to operate the hotel/motel under the trade name "Budget Suites," but the Town refused to approve a certificate of occupancy for a business with "budget" in its name. We note that the record also includes reference to Budget Suites and we will preserve that reference where applicable.

[5] The record is unclear as to the basis of the determination that the development is "legal non-conforming." However, for the purpose of our analysis we are noting the terms "temporary abiding place" or "overnight or short-term lodging" juxtaposed against Bigelow's desired use for extended stay, permanent residence.

Expressing a desire for motels and hotels to operate so that rooms are available for the Town's tourists, the Town passed Ordinance No. O19-010 amending Chapter 22, Businesses, of the Code of Ordinances to create a new Article IX, regulating hotels and motels, effective June 1, 2019 ("HOT Ordinance"). Specifically, the amendment provided for hotel/motel maximum exemptions from the payment of hotel occupancy tax, exempting not more than thirty percent of rooms subject to a room night exemption for the payment of hotel occupancy tax.[6] The ordinance provided for exceptions, violations and revocation of certificates of occupancy.

On June 15, 2023, the trial court granted Town's plea to the jurisdiction contesting jurisdiction over Bigelow's claims on the basis of governmental immunity "and related defenses" dismissing Bigelow's claims with prejudice. By separate order the same date the trial court denied Bigelow's plea to the jurisdiction contesting the court's jurisdiction over the Town's counterclaims.[7] This interlocutory appeal followed.

DISCUSSION

I. STANDARD OF REVIEW

A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject-matter jurisdiction. *Harris Cnty. v. Sykes*, 136 S.W.3d 635, 638 (Tex.

[6] The hotel occupancy tax referenced in the HOT Ordinance is authorized under Chapter 351 of the Tax Code. *See* TEX. TAX. CODE ANN. §§ 351.001 *et seq.*

[7] Trial court's denial of the Bigelow's plea to jurisdiction was not appealable as an interlocutory order. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014.

2004). A jurisdictional plea may challenge the pleadings, the existence of jurisdictional facts, or both. *Alamo Heights ISD v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018). Whether a court has subject-matter jurisdiction is a legal question, and we review de novo a trial court's ruling on a plea to the jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004) (op. on reh'g).

When a plea challenges the pleadings, we determine if the plaintiff has alleged facts that affirmatively demonstrate the trial court's jurisdiction. *Id.* at 226. We construe the pleadings liberally in the plaintiff's favor and look to the plaintiff's intent. *Id.* If the pleadings are insufficient to establish jurisdiction but do not affirmatively demonstrate an incurable defect in jurisdiction, the plaintiff should be given the opportunity to amend. *See id.* at 226–27. But if the pleadings affirmatively negate the existence of jurisdiction altogether, then a jurisdictional plea may be granted without allowing a (necessarily futile) chance to amend. *See id.* at 227.

When a plea to the jurisdiction challenges the existence of jurisdictional facts, our review mirrors that of a traditional summary-judgment motion. *Mission Consol. ISD v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012); *see* TEX. R. CIV. P. 166a(c). We take as true all evidence favorable to the plaintiff, and we indulge every reasonable inference and resolve any doubts in the plaintiff's favor. *Miranda*, 133 S.W.3d at 228. The defendant carries the initial burden of establishing that the trial court lacks jurisdiction. *Garcia*, 372 S.W.3d at 635. If the defendant meets that burden, the plaintiff must then demonstrate that a disputed material fact exists regarding the

jurisdictional issue. *Id.* If a fact issue exists, the trial court should deny the plea. *Id.* But if the evidence is undisputed or the plaintiff fails to raise a fact question on the jurisdictional issue, the plea must be granted as a matter of law. *See id.*

II. ANALYSIS

A. Inverse Condemnation

Article I, section 17 of the Texas Constitution guarantees that "no person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made . . . ." TEX. CONST. art. I, § 17. When a person's property has been taken by the government without compensation, the person may sue for inverse condemnation. *Tex. Dep't of Transp. v. Self*, 690 S.W.3d 12, 25–26 (Tex. 2024). The action is "inverse" because the governmental entity "has not filed a statutory condemnation action to determine adequate compensation before taking the property, so the owner initiates an action for compensation under the Constitution." *Id.* at 26 n.9.

To establish a claim for inverse condemnation, the plaintiff must plead and prove that: (1) an entity with eminent domain power intentionally performed certain acts (2) that resulted in taking, damaging, or destroying the property for, or applying it to, (3) public use. *Id.* at 26. *Commons of Lake Houston, Ltd. v. City of Houston*, No. 23-0474, 2025 WL 876710, at *4 (Tex. Mar. 21, 2025). If the plaintiff does not allege a valid inverse condemnation claim, governmental immunity applies, and the

trial court should grant a plea to the jurisdiction. *TCI W. End, Inc. v. City of Dallas*, 274 S.W.3d 913, 916 (Tex. App.—Dallas 2008, no pet.).

Here, the parties' dispute concerns only the second element[8]—whether the Town's conduct constitutes a "taking." The types of takings that may give rise to an inverse-condemnation claim can be classed as physical or regulatory. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 933 (Tex. 1998) (denial of a planned development proposing increased density). "Physical takings occur when the government authorizes an unwarranted physical occupation of an individual's property." *Id.* A regulatory taking follows from the principle that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Sheffield Dev. Co., Inc. v. City of Glenn Heights*, 140 S.W.3d 660, 670 (Tex. 2004) (challenge to a moratorium and downzoning to decrease density). "Typically, when the government exercises its police power to, for example, abate a public nuisance or implement and enforce common zoning laws, no compensable

[8] In its plea to the jurisdiction, the Town also asserted that Bigelow "failed to allege an intentional act for public benefit." Bigelow responded that neither element is required in a regulatory-takings claim, citing *City of San Antonio v. El Dorado Amusement Co., Inc.*, 195 S.W.3d 238, 244 (Tex. App.—San Antonio 2006, pet. denied) (holding that a plaintiff alleging a regulatory takings claim need not plead or prove "that the taking was for the public use" or that "intent must be shown in a regulatory takings claim."). The Town seems to have abandoned its argument that intent was required—it mentions neither element in its appellate brief. Even if the issue were before us, we would conclude that Bigelow satisfied its burden to plead intent. In *Self*, the supreme court explained that: "Although the Constitution does not expressly require an intentional act, . . . such a requirement helps ensure that the taking is for 'public use.'" *Self*, 690 S.W.3d at 26. In a footnote, the court explained further that the requirement to plead and prove the intent element "applies to both physical and regulatory takings." *Id.* at 26 n.11. For regulatory takings, "the intentional acts are typically the passage of a law or regulation or its actual or threatened application to the plaintiff's property." *Id.* Here, Bigelow alleged that the Town passed the HOT Ordinance and the ordinance effectuates a taking that was sufficient to meet the pleading requirement as to the first element.

taking occurs even though property owners lose some control over their property rights." *Commons of Lake Houston*, 2025 WL 876710, at *6 (citing *Jim Olive Photography v. Univ. of Houston Sys.*, 624 S.W.3d 764, 771 (Tex. 2021). "And this is true even when the government amends a regulation to impose a new restriction that previously did not exist." *Id.* (citing *Quick v. City of Austin*, 7 S.W.3d 109, 124–25 (Tex. 1998)).

A regulatory-taking can occur when a law or ordinance: (1) requires an owner to suffer a permanent physical loss or invasion of its property (a *Loretto*[9] taking), (2) completely deprives an owner of all economically beneficial use of its property (a *Lucas*[10] taking), (3) unreasonably interferes with the owner's right to use and enjoy its property (a *Penn Central*[11] taking), or (4) conditions approval of the use or development of private property on a particular payment or performance by the owner (a land-use extraction). *Commons of Lake Houston*, No. 23-0474, 2025 WL 876710, at *4 & nn.25–30; *see also City of Dallas v. Trinity E. Energy, LLC*, No. 05-20-00550-CV, 2022 WL 3030995, at *4 (Tex. App.—Dallas Aug. 1, 2022, pet. denied) (mem. op.) (discussing types of takings claims).

Where, as here, a plaintiff asserts a *Penn Central* claim—there has been no physical invasion or denial of all economically viable use—we wade into what the

[9] *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 441 (1982).

[10] *See Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1026 (1992).

[11] *See Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

Texas Supreme Court has deemed "a sophistic Miltonian Serbonian Bog" to determine when a regulation becomes a taking. *Sheffield*, 140 S.W.3d at 670.[12] We consider the following factors in determining whether the governmental action unreasonably interfered with the plaintiff's use and enjoyment of property: "(1) 'the economic impact of the regulation on the claimant'; (2) 'the extent to which the regulation has interfered with distinct investment-backed expectations'; and (3) 'the character of the governmental action.'" *Id.* at 672.

1. Economic impact

The first factor in a *Penn Central* takings claim "merely compares the value that has been taken from the property with the value that remains in the property." *Mayhew*, 964 S.W.2d at 936.[13] Here, Bigelow did not plead and provided no evidence that the value of its property has diminished since the Town passed the 2019 Ordinance. Bigelow contends, however, that this factor may be supported with evidence of lost profits. The Town argues that lost profits should not be considered when considering this factor.

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[12] *Sheffield*, at 670, fn. 52 (quoting *City of Austin v. Teague*, 570 S.W.2d 389, 391 (Tex. 1978) (quoting *Brazos River Auth. v. City of Graham*, 354 S.W.2d 99, 105 (1962))); *see also* John Milton, Paradise Lost 49, bk. II, ll. 592–94 (Scott Elledge ed., Norton & Co.1993)(1674)(describing the land beyond Lethe as "A gulf profound as that Serbonian bog /Betwixt Damiata and Mount Casius old, / Where armies whole have sunk").

[13] In *Mayhew*, the owner of the property argued there was no economically viable use of the property with a record replete with the history of the property, purchase price, prior use, desired development plans and proposed increased residential density. In this context, the supreme court stated that "[t]he loss of anticipated gains or potential future profits is not usually considered in analyzing this factor." *Id.* (citing *Andrus v. Allard*, 444 U.S. 51, 66 (1979)).

In *Sheffield*, however, the court held that lost profits are but "one relevant factor to consider in assessing the value of property and the severity of the economic impact of rezoning on a landowner." *Sheffield*, 140 S.W.3d at 677 (planned development with high density residential; after developer's purchase, city implemented a moratorium and down zoning, with evidence offered of property value before and after rezoning); *see also, e.g.*, *City of Sherman v. Wayne*, 266 S.W.3d 34, 45 (Tex. App.—Dallas 2008, no pet.). We have cautioned that "government is not an insurer of the profitable use of property." *Id.*; *see also Sheffield*, 140 S.W.3d at 677 ("[T]he takings clause . . . does not charge the government with guaranteeing the profitability of every piece of land subject to its authority.").

Bigelow pleaded that the HOT Ordinance will cause it to "lose not only profits, but its entire business in Addison." Bigelow reasons that if the HOT Ordinance is enforced against it, Bigelow would have to "turn away at least 65% of its customary long-term residents" to meet the thirty-percent threshold set by the HOT Ordinance. If it fails to do so, Bigelow concludes, it will lose its certificate of occupancy pursuant to the HOT Ordinance. The Town responds that lost profits, by itself, is insufficient to support a taking claim, explaining that "a regulation is not a taking merely because it prohibits the most beneficial use of the property." *See Penn Central*, 438 U.S. at 124. The Town argues that Bigelow's claim fails because

"[p]rediction of profitability is essentially a matter of reasoned speculation that courts are not especially competent to perform." *See Andrus*, 444 U.S. at 66.

We agree with the Town. The special use permit approved a hotel/motel designed and occupied as a temporary abiding place. The HOT Ordinance did nothing more than further define what constitutes temporary. Unlike *Mayhew* and *Sheffield*, Bigelow's claim that it will lose profits is entirely speculative. More importantly, it rests on the unpleaded and unsupported assumption that if Bigelow has to turn away sixty-five percent of its residents, then those rooms will remain vacant. If the HOT Ordinance is enforced against Bigelow, there is nothing preventing it from renting its rooms to short-term guests. Because the Town is not charged with insuring Bigelow's speculative profits, we conclude this factor weighs against a finding that the HOT Ordinance constitutes a taking. *See Sheffield*, 140 S.W.3d at 677; *Wayne*, 266 S.W.3d at 45.

2. Investment-backed expectations

The second factor inquires into Bigelow's investment-backed expectations at the time it purchased the property. This requires "consideration of more than just what the owner may have subjectively 'believed was available for development.'" *See Commons of Lake Houston*, 2025 WL 876710, at *4 (quoting *Penn Central*, 438 U.S. at 130). "It requires consideration of the owner's 'primary expectation concerning the use of the parcel' and whether that expectation was 'reasonable' or merely 'speculative.'" *Id.* (internal citations omitted) (quoting *Penn Central*, 438

U.S. at 130; *Sheffield*, 140 S.W.3d at 677–78). "It also requires consideration of the 'existing and permitted uses of the property' prior to the regulation and whether the regulation permits the owner to obtain a 'reasonable' return on its investment. *Id.* (internal citations omitted) (quoting *Mayhew*, 964 S.W.2d at 936; *Sheffield*, 140 S.W.3d at 677).

Bigelow asserts that it properly pleaded interference with its investment-backed expectations. Bigelow argues that it made it "very clear" in its petition that its "investment-backed expectation was that it could operate as it had been allowed to operate as a hotel/motel with long-term residents for almost 25 years, and it has paid taxes and made substantial investment in and modifications to its property with that expectation." The Town responds that Bigelow's investment-backed expectations are established by the zoning and regulations in place "at the time of purchase." *See FLCT, Ltd. v. City of Frisco*, 493 S.W.3d 238, 273 (Tex. App.—Fort Worth 2016, pet. denied); *see also City of Dallas v. VRC LLC*, 260 S.W.3d 60, 65 (Tex. App.—Dallas 2008, no pet.) ("The existing and permitted uses of the property constitute the 'primary expectation' of the [property owner] that is affected by regulation." (quoting *Mayhew*, 964 S.W.2d at 935)). The Town argues that Bigelow cannot have reasonably expected to house permanent residents in violation of the ordinances in place at the time it purchased the property. We agree with the Town.

In its petition, Bigelow asserted that prior to the adoption of the HOT Ordinance, it could "rent as many of its rooms as it wanted to guests who stayed

longer than 30 days (i.e., "permanent residents")." The Town refuted that assertion and offered numerous ordinances which, according to the Town, "did not allow for non-temporary occupancy" of the property.

"We apply the same principles used to construe statutes to construe municipal ordinances." *BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d 1, 20 (Tex. 2016). "Under well-settled principles of statutory construction, we begin with the statutory language itself." *Id.* We do not review statutes in isolation, but in light of their statutory context, considering the statute as a whole. *Malouf v. State ex rels. Ellis*, 694 S.W.3d 712, 718 (Tex. 2024). "If the text's meaning is unambiguous, we do not resort to extrinsic aids or special rules of construction." *Id.* "When possible, we construe the language in a way that does not render any of it meaningless." *Id.*

In 1992, the Town adopted Ordinance No. O92-037, which rezoned the subject property from an industrial to a planned development district.[14] Planned development districts are governed by Article XV of the Town's zoning ordinances. Article XV provides a procedure for applying to the city council for using property in a planned development district "for any use or combination of uses allowed under the zoning ordinance including special use permits." The article's purpose, as stated in Section 1 of the article, is to "encourage better development in the [T]own by allowing more flexibility in the planning and development of projects." Section 3,

[14] The ordinance contains a list of authorized uses of the property, but "hotel/motel" is not on the list.

titled "Uses Permitted," provides that "[t]he uses permitted in any specific planned development district shall be enumerated in the ordinance establishing such districts."

In 1995, the Town amended its comprehensive zoning ordinance in Ordinance No. O95-019. That ordinance included, among others, the following definitions (emphasis ours):

> Apartment: A room, or suite of rooms, in an apartment house arranged, designed or occupied as *the residence* by a single-family, individual, or group of individuals.
>
> Hotel or Motel: A building or arrangement of buildings designed and occupied as a *temporary abiding place* for guests who are lodged with or without meals, in which the rooms are usually occupied singly or in suites of two rooms for hire.

In 1997, the Town approved an application by the Beltway Development Company to approve development plans for a retail center located on 12.69 acres, to be developed in accordance with the attached plans, memorialized in Ordinance No. O97-018. Attached to the ordinance was a proposed plat map reflecting a single building labeled "retail" stretching the entire length of the property along the northern boundary where Suites of America is now situated.

In November 1998, the Town adopted two ordinances: O98-048 and O98-049. Ordinance No. O98-048 granted Bigelow's application for a special use permit to use the property (7.45-acre tract) as a "hotel/motel" subject to certain conditions.[15]

[15] These conditions related to water runoff, building height, sidewalks, sanitation, irrigation, fire safety, roof equipment, and dumpsters.

Attached to the O98-048 were proposed unit plans, building plans and site plan. Ordinance No. O98-049 approved another application from the Beltway Development Company, with revised development plans for a retail center on the property (12.69 acres). Attached to O98-049 were proposed site plans (with identification of the hotel) and proposed elevation. This ordinance included conditions similar to those in O98-048.[16] The difference between these plans and the 1997 plans is that the "retail" building along the northern portion of the property was now shown as six detached buildings representing the "hotel/motel" usage. Neither Ordinance No. O98-048 nor O98-049 redefined the phrase "hotel/motel" or authorized a use that deviated from the definition of "hotel/motel" as stated in the comprehensive zoning ordinance. Bigelow failed to allege or provide any evidence that the use approved via the property-related ordinances and special use permit included an extended-stay or permanent residential use versus the specified use as a temporary abiding place.

Based upon the record before us, we conclude that the permitted "hotel/motel" use granted to Bigelow through the 1998 special use permit did not allow for the housing of permanent residents. The terms "residence" and "temporary abiding place" are not defined in Ordinance No. O95-019. Nevertheless, in the context of the definitional scheme of Ordinance O95-019, they are clearly meant to be

[16] The conditions related to sidewalks, drainage, ingress and egress easements, irrigation plans, and fire safety.

dichotomous. In general, Ordinance O95-019 repeatedly uses the words "resident," "residential," and "residence" to define terms related to homes and dwellings. For example, the definition of "apartment house," which incorporates the definition of "apartment," and that of "townhouse/condominium" both use the words "home" and "residence" synonymously. Conversely, "tourist court," like "hotel/motel," is defined as "one or more buildings designed or used as temporary living quarters for automobile transients in which individual cooking facilities may or may not be provided."[17]

We conclude that the definition of "hotel/motel" that applied at the time Bigelow acquired the property did not allow the property to be used as a permanent residence. Additionally, our conclusion comports with state law—as Bigelow concedes in its original petition, "hotel guests who stay more than 30 consecutive days are considered 'permanent residents' under Texas law." *See* TEX. TAX CODE ANN. § 351.002(a) (authorizing municipalities to impose an occupancy tax on hotel guests); *id.* § 351.002(c) ("The [hotel occupancy] tax does not apply to a person who is a permanent resident under Section 156.101 of this code."); *id.* § 156.101 (providing tax exception for persons who has a right to uninterrupted use or possession of a room for at least 30 consecutive days). We further conclude that, to the extent Bigelow subjectively believed it was allowed to rent rooms on a long-term

[17] The definition further provides that if cooking facilities are provided "so that the units may be occupied as dwelling units," then "the same area, density and yard regulations as required in the Apartment District shall be observed." There is no parallel to this provision in the definition of "hotel/motel."

basis, that belief cannot have been reasonable in light of the Ordinance Nos. O95-019 and O98-048, which respectively defined, and granted Bigelow a special use permit to develop and operate, a "hotel/motel." Bigelow's purported investment-backed expectation, based upon its preferred business model as a hybrid hotel-apartment for long-term permanent residents, finds no support in the record or under the approved ordinances. This is not a definitional disparity, but rather an argument that by its usage, the zoning ordinance and special use permit were implicitly amended to adapt to Bigelow's preferred business model. We know of no authority, and have been cited to none, that permits amendment to the Town's ordinances by unapproved conduct as opposed to application, public hearing and adherence to the standard approval process afforded the development of this property.

We conclude this factor weighs against a finding that the HOT Ordinance constitutes a taking.

3. Character of governmental action

The final factor requires us to consider the character of the government's action. This includes issues like whether (and the extent to which) the regulation: (1) is "specific to the plaintiff's property or is 'general in character'"; (2) is "designed to 'take unfair advantage' of the owner"; or (3) "permits the owner to avoid the harm through an appellate process or payment." *Commons of Lake Houston*, 2025 WL 876710, at *4, n.32 (quoting *Sheffield*, 140 S.W.3d at 678; and *City of Baytown v. Schrock*, 645 S.W.3d 174, 181 (Tex. 2022)). However, the fact

that the regulation has "a more severe impact on some land owners than on others" does not, in itself, "mean that the law effects a 'taking.'" *Id.* (quoting *Penn Central*, 438 U.S. at 133).

Bigelow argues that it was targeted by the Town. In support, Bigelow points to two "Powerpoint presentations" that the Town produced in discovery. The presentations are dated February 14, 2017, and October 10, 2017, and both are titled "Underperforming Hotels." The February presentation highlights the Town's prior attempts to "address aging hotels that do not meet community expectations." This included a comprehensive plan discussed in 2013 with the goal of keeping "Addison's hotels well-maintained and competitive."[18] Also, the presentation states that in 2015, the Town's "Council directed staff to change the definition of a hotel, no additional direction given."[19]

The October presentation does focus on "Budget Suites." The first slide, titled "previous discussion," contains the following bullet points:

- Strategies to address aging hotels that do not meet community expectations
    - Identify and define the problem
    - Propose a series of ordinance and administrative changes
        - New Hotel Occupancy Tax Collection audit process

[18] The record is silent as to whether this discussion led to any action on the part of the Town.

[19] This discussion appears to have resulted in some action, as a different slide in the same presentation shows a "previous" and a "current" definition of "zoning." It is unclear from the record when the then-current definition was adopted.

        - New zoning requirements and development standards for hotels
        - New hotel licensing and inspection process
    - Council asked staff to determine if Town could focus on Budget Suites rather than implementing broad program

The second and third slides describe the land and zoning of the property on which "Budget Suites" was built. The fourth slide is titled "operating model" and contains the following bullet points:

- Property operates more as an apartment rather than a hotel
- Quote from company website:

    > *Welcome to Budget Suites where you can make one of our apartments your home for a week or beyond!*
    >
    > *A hybrid between a typical hotel and an apartment, our apartments are spacious, comfortable and equally affordable for any budget. Our apartments are designed to serve you with many amenities…Budget Suites has the conveniences of a hotel, with all the comforts of home. We welcome you to make us your home.*

- Records show 450 Drivers Licenses with address of 15130 Marsh Lane
- Observed school bus stop
- 23 students enrolled in Bush Elementary

The fifth slide contains a graph comparing the average monthly collections of hotel occupancy taxes from August 2016 to July 2017 for (1) "all hotels", (2) "extended-stay" and (3) "Budget Suites." The first two categories fluctuate between $15,000 and $25,000 per month. The third category shows that the Town collected between

$0 and $3,000 per month from Bigelow. The sixth slide, titled "Possible Next Steps," provides the following bullet points:

- Rigorous Code Enforcement
  - Would address potential code violations, but not the issue of use
- Revise ordinance to add length of stay limitations
  - Would apply to all hotels
  - Difficult to enforce except in extreme circumstances
- Staff determines that Budget Suites is not operating as a hotel, violating zoning
  - Decision is appealable to the BZA
  - Town could write citations, revoke CO, file Chapter 54 lawsuit
- Rezoning/Amortization Process
  - Town could initiate rezoning to rescind SUP and start an amortization process requiring the business to cease operations after a certain period of time

The seventh and final slide recommends that the Council approve the third option above—i.e., determine that "Budget Suites" was not operating as a hotel and violating zoning ordinances.

To analyze whether the character of the Town's conduct suggests a taking, we first consider whether its action was "specific to the plaintiff's property or was general in character." *Commons of Lake Houston*, 2025 WL 876710, at *4, n.32. The October presentation considers focusing efforts on Bigelow, but the Town chose *not* to do that. Instead, the Town enacted the HOT Ordinance, which applies to all hotels

in the Town. The fact that this ordinance "more severe[ly] impact[s]" Bigelow does not by itself mean that the ordinance effects a taking. *See id.*

Nor can we conclude that the HOT Ordinance is designed to take unfair advantage of Bigelow. *See id.* The Town's primary issue was that Bigelow was operating the property as an apartment, a use for which it was not zoned. We conclude that Town's efforts to address and resolve violations of its zoning ordinances cannot, as a matter of law, take "unfair advantage" of the violating party.

Finally, we consider whether the HOT Ordinance "permits the owner to avoid the harm through an appellate process or payment." *See id.* The ordinance requires that no more than thirty percent of a hotel's "room nights" be occupied by permanent residents. There are two exceptions, neither of which applies to Bigelow. The HOT Ordinance further provides that a hotel that violates the thirty-percent rule for more than three months out of a given year shall be subject to revocation of its certificate of occupancy. There is no provision allowing the violating hotel to pay a penalty in order to avoid revocation. However, the revocation is not automatic. The HOT Ordinance requires that the hotel be given ten days' written notice of a violation, after which "the City Council will consider revocation of the Certificate of Occupancy." We conclude that the hearing before the city council is a sufficient "appellate process" to satisfy this factor.

4. Summary

We conclude that the Town provided evidence to negate all three of the above factors. Accordingly, we affirm the trial court's dismissal of Bigelow's takings claim. *See TCI W. End*, 274 S.W.3d at 916.

B. Declaratory Judgment

In addition to its inverse condemnation/regulatory takings claim, Bigelow asserted a claim under the UDJA, seeking declarations that the HOT Ordinance: (1) is an unconstitutional regulatory taking; (2) violates the Texas Constitution's due-course-of-law provision; and (3) is an unconstitutional special law. We consider only the first two claims, as Bigelow has withdrawn its special-law claim.

1. Regulatory Taking Claim under the UDJA

The Town moved to dismiss this claim as "redundant." The Town argues that Bigelow's UDJA takings claim is duplicative of its compensatory takings claim. Bigelow responds that it was entitled to assert the two claims in the alternative. *See* TEX. R. CIV. P. 47 ("Relief in the alternative or several different types may be demanded[.]"); TEX. R. CIV. P. 48 ("A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses.").

Under the redundant-remedies doctrine, "courts will not entertain an action brought under the UDJA when the same claim could be pursued through different channels." *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 79 (Tex.

2015). "The focus of the doctrine is on the initiation of the case, that is, whether the Legislature created a statutory waiver of sovereign immunity that permits the parties to raise their claims through some avenue other than the UDJA." *Id.*

In *City of Carrollton v. RIHR Inc.*, for example, the trial court awarded both damages for the plaintiff's compensable takings claim and attorney's fees under the plaintiff's UDJA takings claim. 308 S.W.3d 444, 455 (Tex. App.—Dallas 2010, pet. denied). We affirmed the award of damages for the compensable taking but reversed as to attorney's fees. *See id.* We explained that "[a] party cannot use the [UDJA] to obtain an otherwise impermissible attorney's fee." *Id.* at 454. After comparing the two claims, we concluded that they were the same, but with one exception: "Other than attorney's fees, RIHR sought no relief under the declaratory judgment pleading not associated with its cause of action alleging a compensable taking." *Id.* Thus, we concluded that "the declaratory action had no greater ramifications than RIHR's cause of action for a compensable taking and merely duplicated the issues already before the trial court" and held that the plaintiff's UDJA claim "was subsumed" within its compensable takings claim. *Id.*

Here, Bigelow's UDJA takings claim is in every material respect identical to its compensable takings claim. In its original petition, Bigelow asserted the following under both claims: (1) that the Texas Constitution bars the government from taking private property without adequate compensation; (2) that the *Penn Central* factors apply when determining whether there has been a regulatory taking;

(3) that the HOT Ordinance constitutes a regulatory taking; and (4) that Bigelow is entitled to a recoupment period in order to recover its losses resulting from the HOT Ordinance. The only apparent difference between the two is that the UDJA claim does not expressly request compensation for the taking. But the question is not whether the two claims request different remedies, but rather whether Bigelow, in asserting its UDJA claim, sought relief "not associated with its cause of action alleging a compensable taking." *See id.* In other words, all of the relief Bigelow sought under the UDJA claim "could be pursued through different channels." *Patel*, 469 S.W.3d at 79.

We reach the same result when considering Bigelow's argument that it was entitled to plead its claims and requests for relief in the alternative. *See* TEX. R. CIV. P. 47, 48. Bigelow argues that it "is seeking a declaration that [the HOT] Ordinance is unconstitutional because it would act as an unconstitutional takings and, alternatively, is seeking money damages it has suffered as a result of the taking." But Bigelow stops short of explaining how these claims lead to different results, especially when it stated under both claims that the constitutional remedy for a taking is adequate compensation and cited case law that sets forth the factors in determining what constitutes a compensable taking.

We conclude that Bigelow's UDJA takings claim is subsumed within its compensatory takings claim. Accordingly, we affirm the trial court's dismissal of this claim. *See Vill. of Tiki Island v. Ronquille*, 463 S.W.3d 562, 583 (Tex. App.—

Houston [1st Dist.] 2015, no pet.) ("Because Hill's Declaratory Judgment Act claim merely restates her takings claim, we hold that the trial court lacks jurisdiction over her request for declaratory judgment.").

2. Due Course of Law Claim under the UDJA

The Town advances three theories as to why the trial court properly dismissed Bigelow's due-course claim: (1) the claim is unripe because there has been no final decision as to the applicability of the HOT Ordinance; (2) Bigelow failed to allege that the HOT Ordinance violated a vested, protected property right; and (3) the HOT Ordinance was rationally related to a legitimate governmental interest as a matter of law. We agree with Bigelow on the third point, we do not reach the first two.

The Due Course of Law clause of the Texas Constitution provides that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." TEX. CONST. art. I, § 19. "[T]he proponent of an as-applied challenge to an economic regulation statute under Section 19's substantive due course of law requirement must demonstrate that either (1) the statute's purpose could not arguably be rationally related to a legitimate governmental interest; or (2) when considered as a whole, the statute's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest." *Patel*, 469 S.W.3d at 87.

In its original petition, Bigelow asserted its claim for declaratory judgment under the Due Course clause in five paragraphs, numbered ¶¶ 7.09–7.13. The first paragraph cites the two rational-relationship tests from *Patel*. We set forth the remaining paragraphs in full:

> 7.10 Addison's only interest cited in the Ordinance is that it "desires that hotels and motels are operated so that rooms are available to serve Addison's tourists." That desire does not allow the complete elimination of a currently existing money-making use of private property which has done business in Addison for over 20 years. And it certainly does not allow that regulation under the guise that the use of some of Budget Suites' hotel rooms for long-term guests hampers tourists from using the cities remaining 4,000 hotel rooms.
>
> 7.11 Further, there is no rational relationship between allowing only 30% of a hotel's rooms to be occupied by long-term guests, and the number of additional rooms needed to adequately serve Addison's tourism needs. Budget Suites is being denied business income in a manner that is not rationally related to a legitimate government interest and is unduly burdensome or oppressive when considered in light of the alleged governmental interests Addison purports to address.
>
> 7.12 Finally, Budget Suites operates at a very specific price-point and targets a specific type of clientele. There is no reason to believe that the type of "tourists" that would otherwise rent rooms at Addison's Hotel Intercontinental, Marriot, Crowne Plaza, or Hilton would rent rooms at Budget Suites even if Budget Suites kicked out its long-terms guests and had rooms sitting empty. There is also no rational basis for believing that limiting the rooms that a hotel uses for long-term guests to 30% of its rooms will provide however many additional rooms are hypothetically needed to accommodate Addison's tourism needs. The Ordinance is therefore both irrational and oppressive in light of the allegations Addison has made about the necessity to ensure adequate hotel rooms for tourists.
>
> 7.13 Accordingly, the Court should declare that Addison's ban of extended stay properties violates the substantive due course of law/due process rights of the Plaintiff under Texas Constitutional Article I, § 19 under either prong of the standard set forth in *Patel*.

These paragraphs set forth Bigelow's entire claim for due-course violations.[20]

The Town argues that Bigelow's analysis is improperly limited to the Town's interests in tourism. The Town asserts that the HOT Ordinance is rationally related to numerous other governmental interests, including "taxation, business regulation, and the exercise of the Town's police power for the 'best interests of the health, safety and welfare of the City and its citizens.'" The Town argues that its jurisdictional evidence establishes as a matter of law that the HOT Ordinance is related to these other governmental functions. We agree with the Town with respect to the governmental function of taxation and do not consider the others.

At the outset, we reject the premise of Bigelow's argument that the only relevant governmental function is that of tourism. On its face, the HOT Ordinance is not so limited. The introductory paragraph provides (in bolded, all capital typeface) that the ordinance is creating a new article to Chapter 22[21] of its Code of Ordinances, to be titled "Hotel/Motel Maximum Occupancy Exemptions from the Payment of Hotel Occupancy Tax." Additionally, the record reflects tax collection was at the forefront of the Town's decision-making process in the years leading up to the HOT Ordinance's passage. As mentioned previously, the record includes an October 2017 presentations titled "Underperforming Hotels," which discusses

[20] In other sections of its petition, Bigelow sought additional relief, such as injunctive relief and attorney's fees. However, these other sections do not include additional details regarding the substance of Bigelow's due course claim.

[21] Chapter 22 is titled "Businesses."

Bigelow's hotel occupancy tax remittances for the previous year. The Town's concern that Bigelow was operating as an apartment in violation of its special use permit dovetails with the Town's concern that Bigelow was lagging behind other hotels (and even extended-stay hotels) in its hotel occupancy tax remittances.[22]

Tax collection is a legitimate, even compelling, governmental interest. *See Zaatari v. City of Austin*, 615 S.W.3d 172, 201 (Tex. App.—Austin 2019, pet. denied). The Town zoned the property as a planned development district in 1992 and granted a special use permit to Bigelow to operate a hotel/motel in 1998. The Town believed that Bigelow has been operating its business in violation of the Town's zoning ordinances which, among other problems, limited the Town's ability to collect lawful taxes on the property. In response, the Town adopted the HOT Ordinance in order to rectify the situation and set a uniform standard for all hotels within its borders.

We conclude that the HOT Ordinance's purpose and real-world effect are rationally related to the Town's interest in collecting the hotel occupancy tax. Accordingly, the trial court did not err in dismissing this claim.

[22] While not a defined term or use identified in the Town's ordinances, the record reflects the Town's recognition that extended stays are permitted by some hotels, with an average of 15% of the room nights per month for longer-stay guests. We were not asked, and therefore do not address this usage but note that the 30% cap for extended stay strikes a balance between Town's interest in collecting hotel occupancy tax and a few hotels accommodation of longer stay clientele.

CONCLUSION

We affirm the trial court's order.

/Bonnie Goldstein/
BONNIE LEE GOLDSTEIN
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

BIGELOW ARIZONA TX-344, LIMITED PARTNERSHIP D/B/A SUITES OF AMERICA, TX-344 AND/OR BUDGET SUITES OF AMERICA, Appellant

No. 05-23-00642-CV V.

TOWN OF ADDISON, Appellee

On Appeal from the 191st Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-19-09630. Opinion delivered by Justice Goldstein. Justice Garcia participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee TOWN OF ADDISON recover its costs of this appeal from appellant BIGELOW ARIZONA TX-344, LIMITED PARTNERSHIP D/B/A SUITES OF AMERICA, TX-344 AND/OR BUDGET SUITES OF AMERICA.

Judgment entered this 4th day of April 2025.