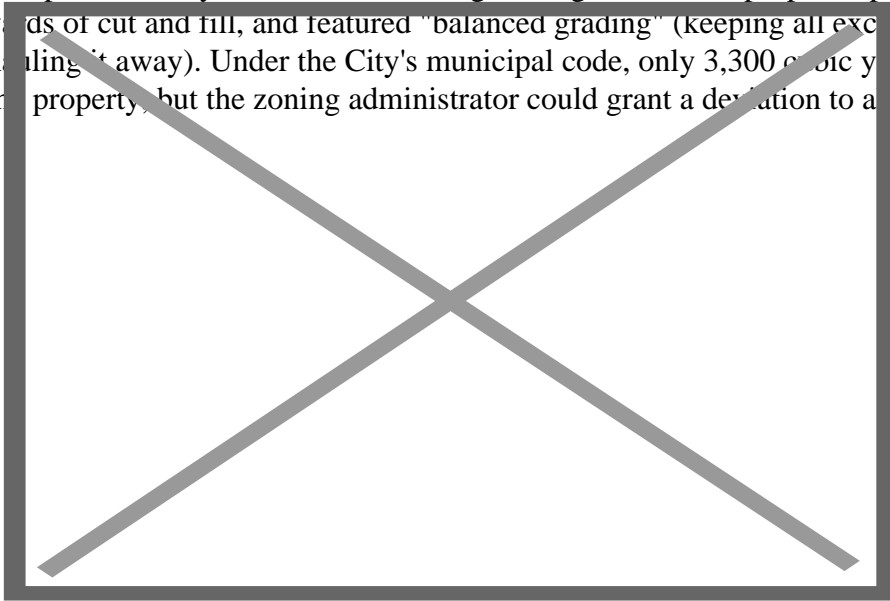


Plaintiffs Cannot Bring Inverse Condemnation Claims Before a Public Agency Makes a Final Determination on Allowable Development

An inverse condemnation challenge to a permit denial is not ripe until the government makes a final determination regarding the scope of allowable development on a plaintiff's property, the California Court of Appeal held in *York v. City of Los Angeles*, 33 Cal. App. 5th 1178 (2019). The plaintiffs submitted an application to the City of Los Angeles to build a house, guest house, driveway, swimming pool, tennis court, storage sheds, retaining walls, and wine caves on a 40-acre hillside parcel that was previously undeveloped except for a vineyard, orchard, and vegetable gardens. The proposed project would involve roughly 80,000 cubic yards of cut and fill, and featured "balanced grading" (keeping all excavated earth on-site as fill, rather than hauling it away). Under the City's municipal code, only 3,300 cubic yards of grading were permitted by right for the property, but the zoning administrator could grant a deviation to allow up to 88,000 cubic yards of grading.



After holding a public hearing on the

plaintiffs' request for a deviation from the grading limits, the zoning administrator approved construction of the house and most of the accessory buildings and retaining walls, but denied the request for 80,000 cubic yards of grading. The plaintiffs appealed to the area planning commission, which held a hearing and denied the appeal. The plaintiffs then filed a lawsuit in superior court, claiming that the City's action was arbitrary and capricious, amounted to a taking of their property, and violated their constitutional rights to due process and equal protection. The superior court issued judgment in favor of the City, and the plaintiffs appealed. On appeal, the plaintiffs claimed that the City's denial of their application amounted to a taking because it precluded them from building a house of any size and therefore deprived them of substantially all economically beneficial use of the property. The court held that the plaintiffs did not demonstrate that a similar amount of grading would be required for any alternative home—the plaintiffs had merely cited to statements by their attorneys and maps and aerial photographs depicting their proposed project. The court explained that the City was only required to consider the project for which the plaintiffs applied, and the burden was on the plaintiffs to demonstrate that it would not be possible to build a house with less grading. The court also ruled that the plaintiffs' inverse condemnation, due process, and equal protection claims were not ripe. The court reasoned that the City's denial of the plaintiffs' grading request "neither definitively limited plaintiffs to 3,300 cubic yards of fill nor precluded

plaintiffs from submitting another, more modest, development proposal"—the City had not yet made a final determination denying the plaintiffs the right to build a house of any size on their property. The court explained that the plaintiffs' as-applied constitutional claims would not be ripe until the City rendered a final decision regarding the application of the municipal code to the plaintiffs' property.

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