

WATER LOG

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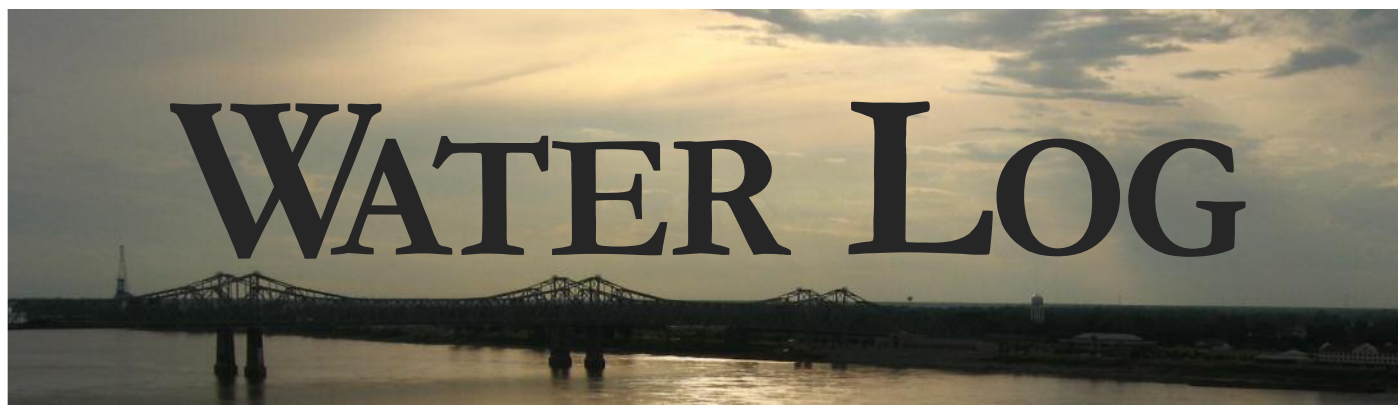
Mississippi Supreme Court Upholds \$644,000 Jury Award to Bay St. Louis Property Owners

Also,

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*Cover photograph of the Bay St. Louis coast;
courtesy of Frank Kovalchek.*

*Contents photograph of the Mississippi River;
courtesy of Ken Lund.*

• UPCOMING EVENTS •

RAE/The Coastal Society Summit on Coastal and Estuarine Restoration

December 10-15, 2016

New Orleans, LA

<https://www.estuaries.org/Summit>

Coastal GeoTools 2017

February 6-9, 2017

North Charleston, SC

<http://coastalgeotools.org>

Aquaculture America 2017

February 19-22, 2017

San Antonio, TX

<https://www.was.org/meetings>

Mississippi Supreme Court Upholds \$644,000 Jury Award to Bay St. Louis Property Owners

Stephanie Otts

Takings claims rarely succeed. The state has the authority to take private property for public use, so long as they provide just compensation. Three brothers – Kenneth, Ray, and Audie Murphy – recently beat the odds. In April 2011, the State of Mississippi executed a Public Trust Tidelands lease to the City of Bay St. Louis for a harbor development project. The Murphy family filed an inverse condemnation action against Mississippi and Bay St. Louis, as they believed the lease covered a portion of their private beachfront property. In 2014, a jury in Hancock County, Mississippi awarded the Murphy family \$644,000 in damages for the taking of their property by the state. On October 27, 2016, the Mississippi Supreme Court affirmed the jury's verdict.¹

Background

This case, like so many shoreline property disputes in Mississippi courts today, starts with Hurricane Katrina. Among the many things Hurricane Katrina destroyed in Bay St. Louis was Dan B's, a popular waterfront restaurant opened by the Murphy family in the early 1980s. The Murphy family's plans to reopen the restaurant, now known as Dan B. Murphy's Restaurant and Bar, have been stymied for almost a decade due to a dispute over who owns the property east (seaward) of the Old Seawall.

The Old Seawall, built in the early 1900s to protect oceanfront properties, was also destroyed by Hurricane Katrina's storm surge. As part of the Hurricane Katrina recovery efforts, the U.S. Army Corps of Engineers built

a new seawall along a footprint similar to the Old Seawall in 2010. The Public Trust Tidelands lease to Bay St. Louis encompassed about 44 acres of property east of the seawall. The dispute centers on whether the Murphy family's property line extends to the water's edge or the toe of the Old Seawall. If it extends to the water's edge, the state infringed on their private property rights by leasing this land to the city.

Public Trust Tidelands Act

The State of Mississippi, pursuant to the Public Trust Doctrine, holds title to submerged lands beneath navigable waters in trust for the public. Mississippi refers to these lands along the coast as tidelands. Tidelands are defined as "those lands which are daily covered and uncovered by the action of the tides, up to the mean line of the ordinary high tides."² This definition implies that the boundary between private land and state tidelands is the mean high water mark.

The Mississippi Legislature enacted the Public Trust Tidelands Act in 1989 to resolve uncertainty and disputes regarding the boundary between state tidelands and private upland property. The Tidelands Act required the Mississippi Secretary of State to prepare an official map setting forth the boundaries of public trust tidelands within the state. The map, completed in 1994, established the boundary at the mean high water line except in areas with seawalls where beach renourishment had occurred. In those situations, the boundary was set at the toe of the seawall.



Photo of the Bay St. Louis bridge; courtesy of Frank Kovalchek.

Murphy Property Boundaries

At trial, the state argued that the 1994 tidelands map established the boundary of the Murphy family's upland property at the toe of the Old Seawall. The Mississippi Supreme Court held that the state's arguments were not supported by the map or the Public Trust Tidelands Act. As set forth by the map, the public trust tidelands boundary is the toe of the seawall only in areas where the beach had been renourished through artificial means. The Murphy family submitted evidence that the beach in front of their property built up ("accreted") before 1994 as a result of natural forces and testified that no artificial beach renourishment projects had occurred. Because there was no renourishment, the court concluded that the 1994 map establishes the western boundary of the public trust tidelands adjacent to the Murphy family's property as the mean high water line.

As the state leased a portion of the Murphy family's private property to Bay St. Louis, the family was entitled to just compensation for the value of the lost property. Assessing damages in situations where government action only affects a portion of the property can be challenging. Damages are generally calculated based on the difference in the fair market value of the property before and after the government action. The court found no error in the jury's calculation of damages.

Conclusion

The state raised a number of other procedural and evidentiary arguments in its appeal of the jury verdict, which included the jury's assignment of liability solely to the state. The Mississippi Supreme Court found no merit in any of these claims. With respect to liability, the court held that the jury acted reasonably in assessing the full amount of damages to the state. Although the city constructed the harbor, it could not have proceeded with the harbor development plans without the lease and consent of the state. 🐼

Stephanie Otts, J.D., is Director of the Mississippi-Alabama Sea Grant Legal Program.

Endnotes

1. State v. Murphy, 2016 WL 6427112 (Miss. Oct. 27, 2016).
2. MISS. CODE. ANN § 29-15-1(h).

Alabama Supreme Court Allows Landowner's Lawsuit against City of Fairhope to Proceed

Terra Bowling

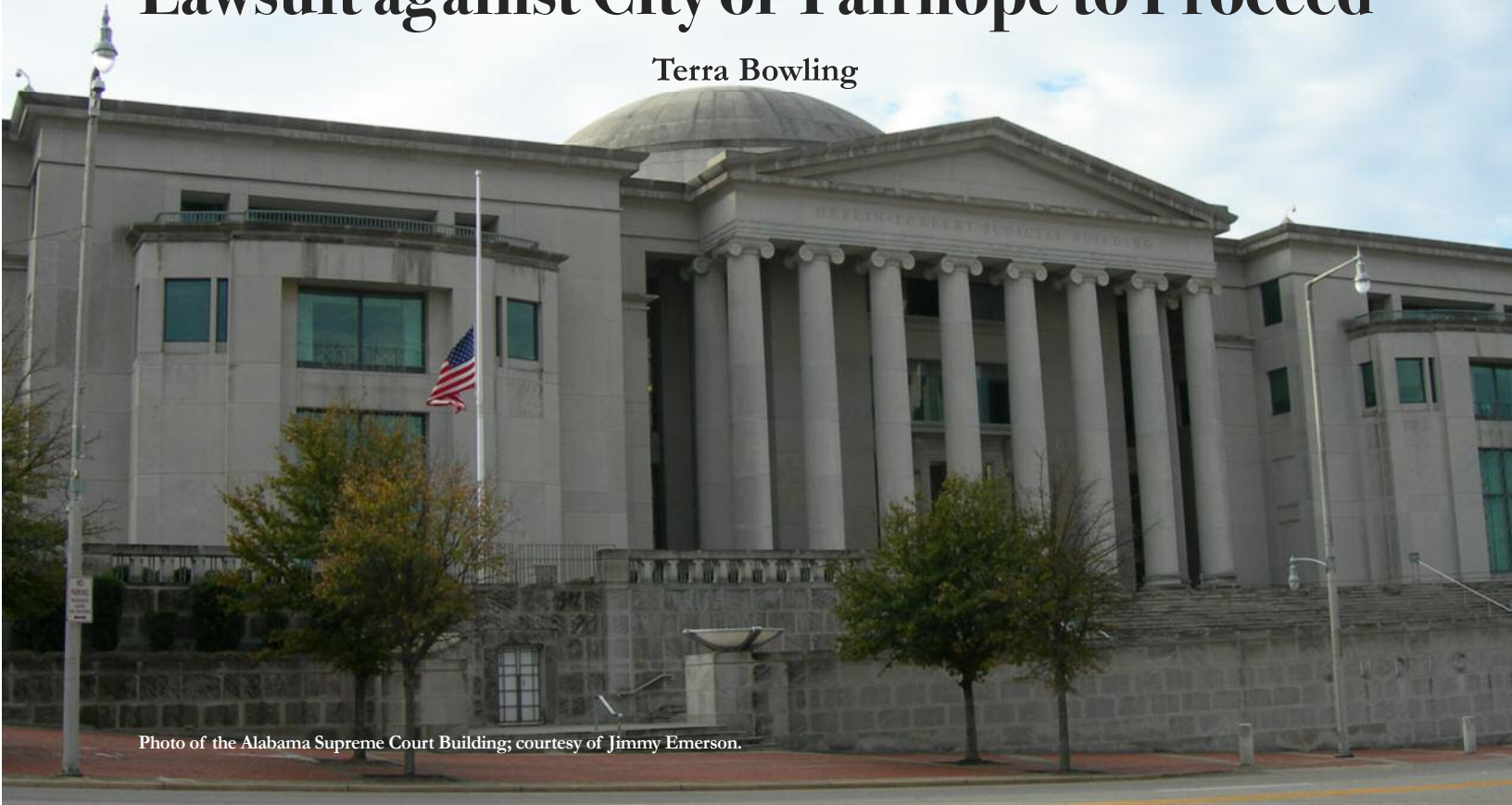


Photo of the Alabama Supreme Court Building; courtesy of Jimmy Emerson.

The Alabama Supreme Court recently ruled on an ongoing dispute between the City of Fairhope and a property owner over development restrictions on a wetland area.¹ The property owner claimed that the city enacted ordinances in an effort to delay development on his property. The city maintained that it was merely protecting the city's natural resources and that the claim was outside the applicable two-year statute of limitations. While the city prevailed in its motion for summary judgment at the lower court, the Alabama Supreme Court overturned that decision.

Background

In 1999, Charles K. Breland, Jr. purchased 65 acres of property outside the city limits but within the police jurisdiction of Fairhope, Alabama. Wetlands cover about half of the acreage. Breland hoped to fill and develop approximately 10.5 acres of the property. As required by state and federal law, Breland filed

applications for permits and certifications from the U.S. Army Corps of Engineers (Corps) and the Alabama Department of Environmental Management (ADEM). The city immediately noted its opposition to the project, filing a formal protest with the Corps.

Despite the city's objection, both ADEM and the Corps issued the appropriate certifications and permits for Breland's project to proceed. ADEM issued a five-year water quality certificate under § 401(a)(1) of the Clean Water Act (CWA) in October 2002. The Corps issued a three-year conditional permit in November 2002 under § 404 of the CWA. Per conditions in his § 404 permit, Breland was required to purchase mitigation credits and set aside a section of the property for use by a local watershed protection association. Breland purchased the required mitigation credits in 2003 and began making preparations for the fill project. As the permit and certification expiration dates (2005 and 2007, respectively) drew closer, the Corps and ADEM issued extensions.

Fairhope Ordinances

During the course of Breland's preparations, the city adopted multiple ordinances regulating fill activities within the city's police jurisdiction, which included Breland's property. In 2006, Fairhope adopted an ordinance that required property owners to obtain a land disturbance permit from the city to conduct fill activities using clays or red soils. Breland began the fill project following the adoption of the ordinance but without seeking a permit, later testifying that he did not plan to use the prohibited materials. Fairhope immediately issued a stop-work order, notifying Breland that a land disturbance permit was required. Breland responded by filing a permit application.

In June 2008, the city adopted an additional ordinance instituting a moratorium on the issuance of land disturbance permits until October 15, 2008. Breland's permit from the Corps was set to expire in November 2008. Breland filed suit against the city seeking to compel the city to issue him a land disturbance permit. After the Corps extended Breland's permit to November 2013, Breland voluntarily dismissed his action against the city. His permit application remained under consideration. Breland testified that after he dismissed his suit, Fairhope officials initiated conversations with him to buy his property.

In 2008 and 2009, the city adopted two more ordinances that regulated excavation and fill activities within the city's permitting jurisdiction. Breland resumed filling activities in November 2011, believing that Fairhope had been negotiating with him to buy the remainder of the property under false pretenses. Breland believed Fairhope was trying to delay him from resuming the fill project until the Corps permit expired. Fairhope again issued a stop-work order, noting that Breland was in violation of several city ordinances. In 2013, Breland again filed suit against Fairhope in the county circuit court.

Courts Weigh In

In his suit, Breland sought a temporary restraining order and preliminary injunction against Fairhope, as well as damages from the city for acts of negligence in handling his permit application. The trial court granted summary judgment in favor of the city, finding that Breland's case was filed outside of the applicable two-year statute of limitations. The court reasoned that Breland knew of Fairhope's actions when he was issued the first stop-work




Canadian Geese on a pond in Fairhope, Alabama; courtesy of Tim Williamson.

order in 2008; therefore, the current action, filed in 2013, was barred by the statute of limitations.

The Alabama Supreme Court reversed. First, the court noted that a statute of limitations did not apply to Breland's claims challenging the validity of the permitting ordinances. The court found that the ordinances presented a current and ongoing infringement of Breland's property rights. According to the court, measuring a limitations period from enactment or enforcement of the ordinances would not make sense, because the ordinances continued to interfere with his use and enjoyment of his property.

The court noted that a statute of limitations did apply to Breland's claim seeking damages. The court explained that this claim was backward-looking and stemmed from Fairhope's specific actions; therefore, a two-year statute of limitations applied. The court then looked at whether the statute of limitations began running with the 2011 stop-work order or from prior actions. The court found that each time Fairhope enforced its ordinances to stop Breland from conducting fill activity on his property, the city committed a new act that served as a basis for a new claim. Fairhope issued the last stop-work order in November 2011. Since Breland filed the current action in August 2013, the two-year statute of limitations did not bar a claim for damages stemming from the 2011 stop-work order.

Conclusion

The ongoing dispute has been costly for both parties, and the litigation will continue. The Alabama Supreme Court remanded the case to the circuit court. The lower court will rule on the substance of Breland's claims. 

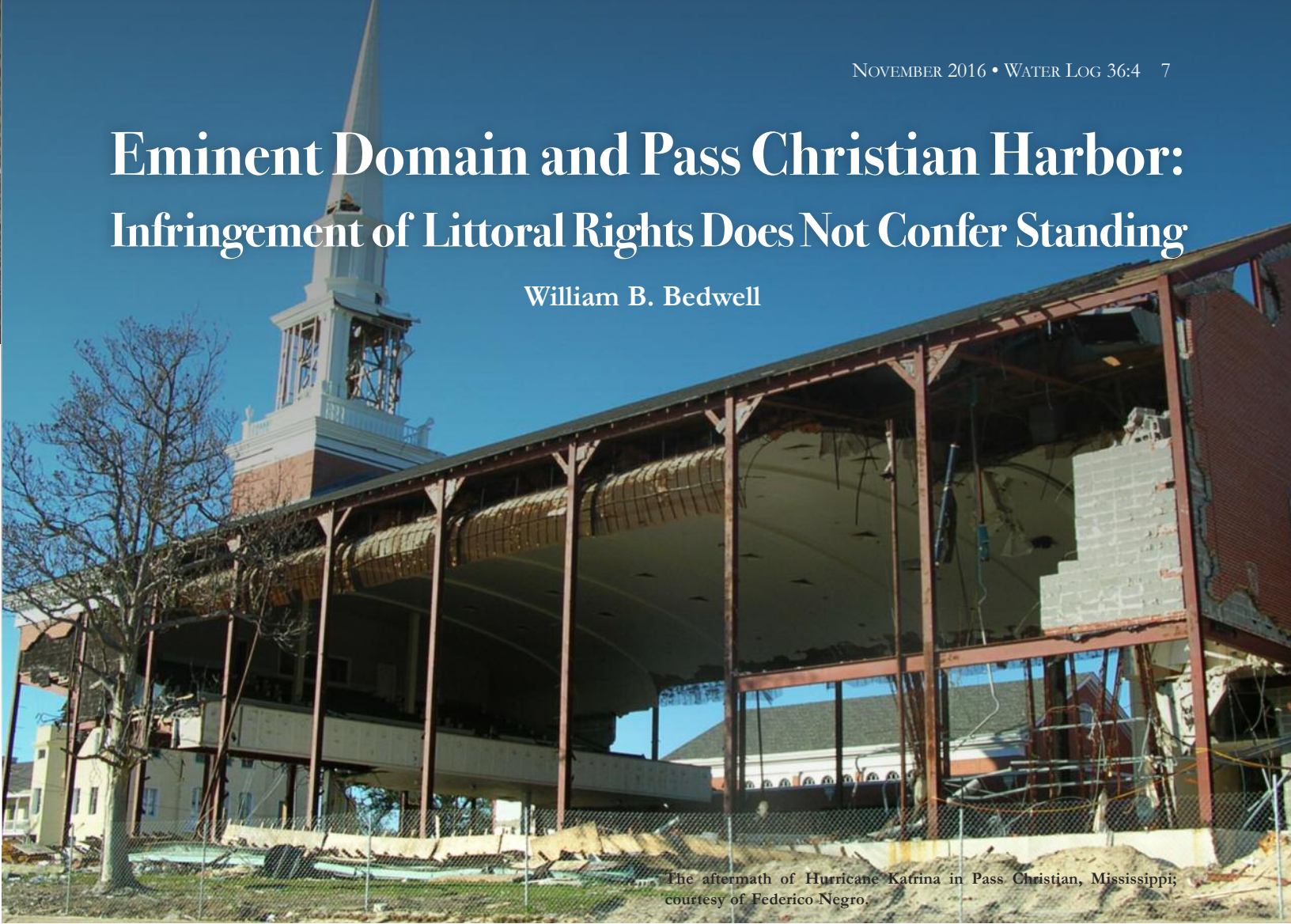
Terra Bowling, J.D., is Senior Research Counsel with the National Sea Grant Law Center.

Endnotes

1. Breland v. City of Fairhope, No. 1131057, 2016 WL 5582405 (Ala. Sept. 30, 2016).

Eminent Domain and Pass Christian Harbor: Infringement of Littoral Rights Does Not Confer Standing

William B. Bedwell



The aftermath of Hurricane Katrina in Pass Christian, Mississippi; courtesy of Federico Negro.

Hurricane Katrina hit the city of Pass Christian hard.

A significant portion of the city's buildings and infrastructure was destroyed by the storm surge. Following the initial recovery and rebuilding efforts, the city sought to expand its harbor. The Pass Christian Harbor expansion construction began in 2011 and was completed in 2014 as a partnership between the City of Pass Christian and the State of Mississippi.¹ The \$33 million project expanded the harbor to 84,000 square feet to accommodate 500 vessels, parking lots, a comfort station, and an ice house.²

Although completed nearly two years ago, the Pass Christian Harbor project was the subject of a recent Mississippi Supreme Court decision. Russell Real Property, LLC (Russell) owns an interest in a parcel of land which is now partially covered by the Pass Christian Harbor parking lot. In 2013, Russell filed a complaint for inverse condemnation against Pass Christian and the State of Mississippi alleging a taking of private property

without compensation. The Harrison County Circuit Court granted summary judgment in favor of the city and the state in August 2015 concluding that Russell did not have standing to bring the claim. Russell appealed the dismissal of its complaint to the Mississippi Supreme Court.

Background

On September 24, 2010, to facilitate its harbor development plans, the city entered into a forty-year lease agreement with the State of Mississippi to develop a portion of the Harrison County shoreline. Two months later, on November 22, 2010, Russell obtained a one-half interest in a parcel of shoreline property that crosses Highway 90 and abuts the Mississippi Sound. The lower half of the property falls within the leased area. In its complaint, Russell alleged that, by entering into the lease, the city and state had taken its property and it was therefore entitled to just compensation.

The Fifth Amendment of the U.S. Constitution prohibits the government from taking private property for public use without just compensation. Using the authority of eminent domain, state and local governments may condemn, or take title to, private property for public uses such as a highway or a public park. Inverse condemnation claims arise from government regulation of private property. Government regulation that goes “too far” may be deemed by courts as similar to a physical taking entitling private property owners to compensation.³

Standing

To pursue an inverse condemnation claim, a party must first have standing to sue. Plaintiffs must demonstrate that they have a legal right to bring the lawsuit in question. In litigation involving property claims, the Mississippi Supreme Court has stated that “there must be a present, existent actionable title or interest” for a party to have standing to sue.⁴

The Mississippi Supreme Court upheld the Harrison County Circuit Court’s determination that Russell lacked standing to bring an inverse condemnation claim. Russell did not own an interest in the property when the city and the state executed the lease in September 2010. The owner of the property at that time was Ellis Trust. Russell would only have standing to sue if the deed executed by Ellis Trust conveying its one-half interest also contained language transferring a cause of action. The Mississippi Court of Appeals has held that a “deed to land does not implicitly convey any right of action for trespasses or property damage that occurred prior to the transaction.”⁵ The quitclaim deed from Ellis Trust was silent regarding a cause of action and Russell provide no other evidence of such a transfer. Because Russell did not own an interest in the property when the claim arose, the court held that it did not have standing to sue.

Russell admitted it did not own the property when the lease was executed. However, Russell claimed its current possession of littoral rights, and the governments’ interference with those rights, provided alternative grounds for conferring standing. In Mississippi, littoral rights include the right to “plant and gather oysters, construct bath houses,

piers, and other structures in front of any land bordering on the Gulf of Mexico or Mississippi Sound.”⁶ The Mississippi Supreme Court disagreed. The court found that Russell could not gain standing to sue under inverse condemnation for its loss of littoral rights because the Mississippi Supreme Court had previously held that those “are not property rights per se,” but are only “licenses” which are revocable by the government.⁷

The Mississippi Supreme Court upheld the Harrison County Circuit Court’s determination that Russell lacked standing to bring an inverse condemnation claim.

Conclusion

The Mississippi Supreme Court found no error in the circuit court’s finding that Russell lacked standing to sue for inverse condemnation. Russell lacked standing because it failed to secure a transfer of a right of action when obtaining an interest in the shoreline property. Russell could not gain standing by alleging an infringement of littoral rights, because they are not property rights under Mississippi Law. The Mississippi Supreme Court upheld the trial court’s judgment dismissing Russell’s complaint. 🐼

William Bedwell is a second-year law student at the University of Mississippi School of Law.

Endnotes

1. Ed., *Pass Christian Harbor Expansion Nears Completion*, THE CLARION-LEDGER, July 27, 2014.
2. Ed., *Pass Christian Harbor Gets \$33 Million Expansion*, WLOX.com, 2011.
3. See *Pennsylvania Coal Co. v. Mahon*, 260 US 393 (1922).
4. *Kirk v. Pope*, 973 So.2d 981, 989 (Miss. 2007).
5. *Flowers v. McCraw*, 792 So.2d 339, 342 (Miss. Ct. App. 2001).
6. MISS. CODE. ANN. § 49-15-9 (1972).
7. *Miss. State Highway Comm’n v. Gilich*, 609 So.2d 367, 375 (Miss. 1992).

Texas Navigation District Lacks Authority to Lease Lands for Oyster Culture

Stephanie Otts

Photo of Trinity Bay; courtesy of Smthng Else Media.

In April 2014, the Chambers-Liberty Counties Navigation District entered into a thirty-year lease with Sustainable Texas Oyster Resource Management (STORM). The lease granted STORM the exclusive right to cultivate and harvest oysters on 23,000 acres of submerged lands in Galveston Bay. Six private oyster leases issued by the Texas Parks and Wildlife Department (TPWD) fall within the lease boundaries. In August 2014, STORM notified the four oystermen holding these leases that they were prohibited from engaging in oyster activities on the leased land without STORM's consent.

The execution of the lease and STORM's subsequent actions triggered a firestorm of controversy. The four state leaseholders – Hannah Reef, Inc., Shrimps R Us, Ivo Slabic, and Michel Ivic (collectively “Oystermen”) – filed suit against STORM in July 2015 to enforce their property rights. The State of Texas, on behalf of the TPWD, filed a separate lawsuit against the District, its Commissioners, and STORM in August 2015 asserting the District did not have legal authority to enter into the lease. The courts have ruled in favor of the Oystermen and the state in both cases.

Background

The Chambers-Liberty Counties Navigation District was created in 1944 to promote and provide for navigation within Chambers and Liberty counties. Through a series of land patents from the State of Texas in 1957 and 1967, the District acquired title to more than 23,000 acres of submerged lands in Galveston and Trinity Bays. The patents expressly reserved public rights to use the water above the conveyed submerged lands for hunting, fishing, and other recreational purposes.

The TPWD is vested with the authority to regulate the taking and conservation of oysters.¹ The vast majority of licensed oystermen in Texas work the 22,760 acres of public reefs in Galveston, Matagorda, and San Antonio Bays during the designated oyster-harvesting season from November 1 to April 30 each year.² The TPWD leases only a couple of thousand acres of submerged lands to private individuals for the development and maintenance of private oyster beds. Private leaseholders, however, can harvest year-round and produce about thirty percent of the total oyster harvest in the state.³



Photo of a boat on Galveston Bay; courtesy of Dan Thibodeaux.

The TPWD issued the six private leases currently held by the Oystermen between 1975 and 1989. The leased tracts lie within the area of submerged lands conveyed to the District in 1957 and 1967. The leases, referred to as certificates of location, authorize the leaseholders “to plant oysters and make a private oyster bed in the public water of the state.”⁴

District Authority to Lease Land

The Chambers-Liberty Counties Navigation District asserts that § 62.107 of the Texas Water Code provides it with the authority to enter into the lease with STORM. Section 62.107 authorizes navigation districts to acquire and own land as necessary for the development and operation of navigable water, ports, or industries and businesses on land within the district.⁵ Navigation districts are also authorized to lease any part of the acquired land to any individual or corporation.⁶

In its lawsuit against the District, the State of Texas argued that the District exceeded its “statutory authority by asserting possession and control over oysters and purporting to pass that possession and control to STORM.”⁷ The District filed a motion to dismiss with the trial court. The trial court denied the District’s motion and the District appealed. The Texas Court of Appeals reversed the trial court with respect to the state’s *ultra vires* (“beyond the powers”) claim against the District. *Ultra vires* claims may only be brought against state officials – here the District Commissioners. However, as the state had brought similar claims against the Commissioners, the ruling did not result in the dismissal of the lawsuit.

The Texas Court of Appeals agreed with the state that the District Commissioners exceeded their authority. The lease attempts to grant STORM the right to create, manage, and cultivate oyster beds and harvest oysters. For this grant to be effective, the



Photo of oysters covering the ground in Texas; courtesy of Mitsy McGoo.

District must have these rights to convey. The TPWD has express statutory authority to manage the oyster resources of the state. The court found no provision in state law authorizing the District to exercise control over oyster harvesting. In light of the TPWD's express authority and the District's lack thereof, the court concluded the District Commissioners exceeded their authority by entering into the lease.

Similar reasoning guided the Galveston County District Court to grant the Oystermen's partial motion for summary judgment in their litigation against STORM. On September 28, 2016, the district court declared that the TPWD has exclusive authority to control the planting and harvesting of oysters.⁸ The court further declared that the District lacked legal authority to regulate oysters or enter into the lease with STORM. The lease between the District and STORM was therefore null and void and unenforceable against the Oystermen.

Conclusion

The TPWD and the Oystermen appear to have won the first round, but the battle may not be over. The president of STORM has said that he will appeal the district court's order.⁹ The state's litigation against the District also continues at the trial level. The appellate court's ruling allows the state to move forward with its claims for restitution for the value of any oysters unlawfully possessed by the District or STORM.¹⁰ 🐡

Stephanie Otts, J.D., is the Director of the Mississippi-Alabama Sea Grant Legal Program.

Endnotes

1. TEX. PARKS & WILD. CODE § 1.011(d).
2. Lance Robinson, [Oysters in Texas Coastal Waters](#).
3. Gary Cartwright, *Consider the Oysters*, TEXAS MONTHLY (April 2010).
4. TEX. PARKS & WILD. CODE § 76.006(a).
5. TEX. WATER CODE § 62.107(a).
6. *Id.* § 62.107(b).
7. *The Chambers-Liberty Counties Navigation District v. Texas*, 2016 WL 3677448 at *6 (Tex. Ct. App. July 8, 2016).
8. Order Granting Plaintiff's Amended Partial Motion for Summary Judgment, *Hannah Reef, Inc. v. Sustainable Texas Oyster Resources Management*, Cause No. 15-CV-0772 (56th Jud. Dist., Galveston Sept. 28, 2016).
9. Matt Cooper, *Judge Sets Texas Straight on Oysters*, COURTHOUSE NEWS SERVICE, Oct. 4, 2016.
10. *See* TEX. PARKS & WILDLIFE CODE §§ 12.301, 12.303.

The Virtue of Public Markets in a Coastal Context

Stephen Deal

With the passage of the Biggert-Waters Act in 2012 and subsequent changes to the Community Ratings System, it has become clear that flood costs and expenses will be an overriding concern for coastal cities and towns for quite some time. Many regulations call for extensive structural changes, which have the unintended effect of governing the built form and appearance these communities generally end up exhibiting. That is why it is so important to develop a design framework that recognizes the need for flood resistant structures while still allowing for great urbanism to take place. The traditional city is still our best tool for developing a more resilient society, which is why it is important that structural mitigation goes hand in hand with the aesthetic components that give rise to a dense and livable city.

One prototypical city structure that may point us to a better design framework for flooding is the public market. Small retailers located within public markets generally benefited from the market's unified management structure and the resources the city could devote to creating a structurally sound and fortified building. In short, it's a great way of adding a layer of institutional security in an environment where rapid growth and a fragile coastal ecosystem can undermine local attempts at creating community stability.

Public Markets and Resilience

While public markets are generally recognized for the contributions they make to civic life and urban vitality, few have examined the market building as a structure that allows small business owners and retailers to collectively pool their risk rather than going it alone. The

virtues of a public market as a model for community resiliency were explored a few years ago in a Resiliency Plan created by Dover, Kohl and Partners for the town of Jean Lafitte, Louisiana.¹ The consulting group proposed creating a Fishermen's Market that would be arranged around a series of small, open-air pavilions, which would be built in compliance with all building codes and utilize open walls. In theory, such structures would allow for the easy passage of floodwater and could be hosed down a short time later and be ready for use again.

While America's most famous public markets generally predate modern building codes and regulations, cities and local governments nevertheless strived to create structures that would stand the test of time. When the city of Mobile was looking to build a market house in 1823, the contract from the city demanded that the structure be built using solid brick piers, a paved brick floor and that the gable should be built with cypress or pine shingles.² The city of Pittsburgh also showed great attention to detail in 1802, when it hired an individual to measure the new city market house and verify that it was built according to the contract.

The resilience of markets is not merely a question of how much structural integrity one can build into the model. To understand why public markets endure, one has to understand the concept of successional urbanism. Successional urbanism was a term used by Andres Duany in a 2013 article to describe the maturation of cities and towns.³ When communities are first getting started, the built environment usually consists of small, less formal structures. As they grow, they start building bigger and better until they eventually reach the peak urban condition.



One of America's greatest colonial-era structures, Faneuil Hall served as a public market for the city of Boston while also functioning as an important city structure and gathering space.

Though this kind of small-scale urban development process is well chronicled in planning literature, few have considered that public markets occupy another end on the continuum of successional urbanism. Markets are permanent structures that can accommodate numerous temporary uses and, over time, they too may transition to a higher or more permanent state of use. The public markets of the past were built with high intent and built to last, which is why many of them also served dual functions as public gathering places and community centers. For example, many of America's oldest public markets followed the English example of having an arcaded market on the ground floor and municipal offices on the upper floor.

In some cases, the whole building may transition to another use and take on a new identity. In 1858, the city of Mobile had just completed a new market building, but it wasn't long before the market was being used for activities other than selling crafts and produce.⁴ During the Civil War, the building was briefly used as a militia armory. After the Civil War, the city moved some of its offices into the building. While shopkeepers and

vendors continued to use the space until 1940, city offices eventually occupied the entire structure and a new identity was forged, as it became Mobile City Hall. This is a good example of successional urbanism in action and how a multi-purpose space, such as a public market, could eventually be converted to house more permanent operations.

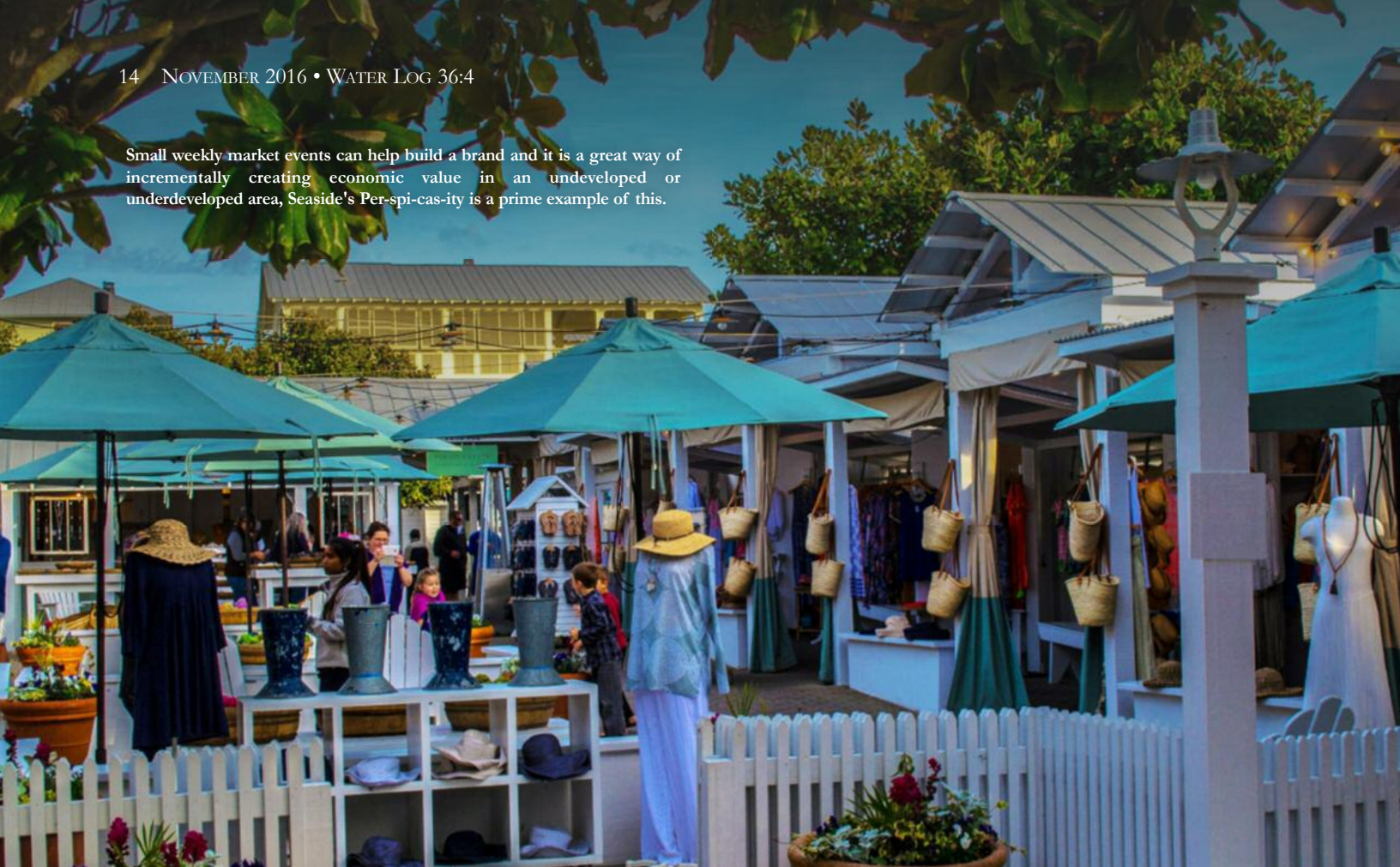
The Gulf Coast and the Role Public Markets Played

Over the centuries, the Gulf Coast has been home to many different ethnic groups and cultures. With so much diversity in the region, the city or neighborhood market was not simply a hub for commerce. It was a center of cultural activity and was pivotal in shaping the causal social interactions within a neighborhood. Nowhere was this truer than in New Orleans.

During the mid-19th century, the city of New Orleans far outpaced other major American cities in the creation of public markets.⁵ At its peak, the city was home to 34 community markets, each of which served a valuable community role in fostering a sense of community. Though most of the markets have ceased operating today, the city is making strides towards reviving the Big Easy's storied history of public markets. The St. Roch Market, which sits on the border of New Orleans' Marigny neighborhood, was recently renovated into a startup business incubator for local food vendors. The 6,800-square-foot structure is now home to thirteen individual vendors. Will Donaldson, who presides over the management of St. Roch Market, notes that since the vendors are able to run smaller operations with a light footprint, they have lower expenses which enable them to offer quality food at prices comparable to the nearby fast food outfits.⁶ The market thereby provides some additional food security to the adjacent working-class St. Roch neighborhood.

Managed properly, a market can be an important lynchpin in community development efforts, even when the development in question is new infill. When the new urban community of Seaside, Florida was getting started in the mid-1980's it was still fairly remote and rural.⁷ In 1981, Daryl Davis, wife of town founder Robert Davis, decided to start an open-air market at the fledgling development. Fresh produce, of

Small weekly market events can help build a brand and it is a great way of incrementally creating economic value in an undeveloped or underdeveloped area, Seaside's Per-spi-cas-ity is a prime example of this.



course, was a mainstay for the market, but products sold also included cotton clothing, t-shirts, ceramics from Italy, and even a bookstand. Eventually Daryl discovered that the clothes sparked more consumer interest than the fruits and vegetables and so she decided to open a clothing boutique known as Per-spi-cas-ity. Per-spi-cas-ity is composed of two rows, each containing four market stalls. In the early years, it doubled as a market in the daytime and a musical concert and movie venue at night. Now that Seaside has been fully developed, Per-spi-cas-ity is a full-fledged clothing boutique that still serves as an important retail node among the full-time stores and restaurants that now call Seaside home.

Creating Social Capital Under One Roof

Although markets fell out of favor as grocery stores emerged as the primary place where individuals buy food and produce, the role of a public market as small business incubator is still just as necessary as it was sixty and seventy years ago. The business model and management structure of yesterday's grand public markets can be seen in the humble flea market. The National Flea Market Association

states that there are more than 1,100 flea markets located within the United States and they conduct \$30 billion in sales annually.⁸ To give an example of the kind of consumer traffic these markets generally receive, a 2011 *New York Times* article estimated that about 25,000 people showed up for the opening weekend of the Brooklyn Flea Market.⁹

While flea markets may be a ubiquitous feature on the American landscape, they are generally relegated to the margins of urban society. How does this business model change if it is centered in areas with high economic value where it can become a prominent fixture of urban life? The answer to that question may lie in Seattle, which is home to one of the nation's premier urban markets, Pike Place Market.

An economic impact study performed by the Project for Public Spaces highlighted a number of business franchises and chains that got their start at Seattle's Pike Place Market. The Project for Public Spaces was able to identify eight unique businesses that had formerly occupied farm tables but now own commercial space in the market.¹⁰ Five additional businesses, which started at the market, have now grown

to become local franchises in their own right. The economic impact of Pike Place Market becomes even more impressive if one includes the nearby commercial establishments that congregate around the market. One of the companies that directly benefited from its close proximity to the market was none other than Starbucks. Today, people can visit the company's second location (the first is no longer in operation) at No. 1912 Pike Place, which began operating in 1977 and is a fitting testament to the economic empowerment that a truly great public market provides.¹¹

A full-fledged market operation is also quite flexible and accommodates a number of economic changes from season to season. Employment at Pike's Place generally peaks at a seasonal high of 2,400 workers in the summer and in the winter drops down to 1,500 workers. Public markets enable small producers, such as framers and craftsmen, to leave the complexity of building management and general operations to the market authority and instead focus on developing and refining their product line. As the operations grow, they are able to move out of the market into more permanent retail space, freeing up market space for the next business.

Conclusion

The simple functionality and multi-purpose nature of many of America's most historic public markets can teach us a great deal about what it takes to forge a resilient and lasting community. With market buildings the value isn't purely economic, but rather comes in part from the institutional and operational acumen they can provide to small merchants and vendors. The economic analysis conducted for Pike's Place Market in Seattle also highlights the institutional resiliency such an arrangement can offer from changes in seasonal traffic and economic conditions. The small farmer or local artisan may toil in relative obscurity in a low-density sprawl environment, but if a public market is introduced into the equation, their commercial endeavors can become more than just an opportunity to make money. They can form the foundation of a city's local identity and culture, and that is something that cannot be easily replicated. City governments and local non-profits, as a general principle, can't buffer each individual and business owner from the risks inherent in



an ever-changing world. But through public markets, city governments and local leaders can provide institutional support and backing to the informal social interactions and economic transactions that make city life vibrant and appealing. 🐟

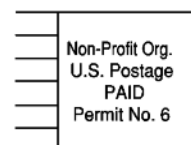
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