

STATE OF MICHIGAN
COURT OF APPEALS

WEST BAY EXPLORATION CO.,

Plaintiff-Appellant,

v

CITY OF FARMINGTON HILLS and
FARMINGTON HILLS CITY COUNCIL,

Defendants-Appellees.

UNPUBLISHED

June 19, 2001

No. 217590

Oakland Circuit Court

LC No. 97-002706-AA

WEST BAY EXPLORATION CO.,

Plaintiff-Appellant,

v

CITY OF FARMINTON HILLS and
FARMINGTON HILLS CITY COUNCIL,

Defendants-Appellees.

No. 217611

Oakland Circuit Court

LC No. 97-002707-AS

Before: Bandstra, C.J., and Griffin and Collins, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff West Bay Exploration Co. appeals by leave granted an order of the circuit court which denied review, on the ground that the matter was not ripe for review, of defendant Farmington Hills City Council's resolution denying plaintiff's application for an oil well drilling permit under a city ordinance. We reverse and remand for further proceedings.

Drilling for gas or oil in defendant city is prohibited without a permit. Defendant has a natural resources ordinance governing the issuance of such permits. On June 16, 1997, plaintiff applied for a permit to drill an oil and gas well near highway I-275. However, following local opposition to proposed drilling expressed at public hearings, defendant city council unanimously

adopted a resolution on December 15, 1997, denying the application. The principal reason stated for denying the permit was a public health and safety concern about hydrogen sulfide releases which were likely to accompany the drilling of a well. The resolution further stated that plaintiff may “resubmit” its application.

On December 30, 1997, plaintiff filed a claim of appeal with the Oakland Circuit Court, appealing defendant’s resolution denying its application for a permit. At the same time, plaintiff also filed a complaint seeking a writ of superintending control, in which plaintiff alleged that it had followed all local and state requirements and that defendant’s denial of its application was not supported by evidence and constituted an abuse of discretion. The two actions were consolidated by order of the trial court and on January 28, 1999, without addressing the merits of plaintiff’s challenge to the city’s decision, the circuit court issued an opinion and order dismissing and remanding the case on the basis that the December 15, 1997, resolution was not a “final” decision of the city council and thus the case was not “ripe” for review. In so holding, the trial court specifically noted that “The Resolution indicates on page 4 that the application may be resubmitted with additional information.” The trial court, citing two provisions in the city ordinance pertaining to issuance of a drilling permit which direct the city to protect the public health, safety, and welfare, found that the city had reasonable cause to require that additional information be submitted “to allay those fears.” The circuit court remanded the matter for “further action.” Plaintiff now appeals.¹

On appeal, plaintiff maintains that defendants’ December 15, 1997, resolution denying its application for an oil and gas well drilling permit was a final decision ripe for judicial review, and the trial court therefore erred in denying review. We agree.

This Court reviews a determination that a matter is ripe for review de novo, as it is a question of law. *Kinzli v City of Santa Cruz*, 818 F2d 1449 (CA 9, 1987), amended on other grounds, 830 F2d 968 (1987). Cf. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997). Cities have the power to establish the terms and conditions for granting licenses. MCL 91.2. A city’s decision to grant or deny a permit for an oil or gas drilling license is purely an administrative decision. *City of North Muskegon v Miller*, 249 Mich 52, 62-63; 227 NW 743 (1929). Defendant city was authorized to make this judicial, or quasi-judicial, determination by

¹ Plaintiff filed both a claim of appeal as well as an application for leave to appeal with this Court in light of its uncertainty regarding whether the action filed in the circuit court was reviewable by way of appeal or by way of superintending control. Because the trial court consolidated the cases and did not address that issue in its decision, plaintiff sought review by this Court through both available avenues. This Court dismissed plaintiff’s claim of appeal, *West Bay Exploration Co v City of Farmington Hills*, unpublished order of the Court of Appeals, issued April 20, 1999 (Docket No. 217610), and then granted plaintiff’s delayed application for leave to appeal. *West Bay Exploration Co v City of Farmington Hills*, unpublished order of the Court of Appeals, issued May 17, 1999 (Docket No. 217590). On January 4, 2001, this Court consolidated the two cases. *West Bay Exploration Co v City of Farmington Hills*, unpublished order of the Court of Appeals, issued January 4, 2001 (Docket Nos. 217590, 217611). We need not currently address the appropriate appellate pathway because the question is not determinative of the correctness of the lower court’s decision and thus of the issues before this Court.

the Farmington Hills Code, Sec 16.5-20. Const 1963, Art VI, § 28 authorizes judicial review of defendants' decision, if it is final:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decision, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

Both parties agree that *Electro-Tech, Inc v H F Campbell Co*, 433 Mich 57; 445 NW2d 61 (1989), is relevant to the present case. In *Electro-Tech*, our Supreme Court adopted the ruling in *Williamson Co Regional Planning Comm v Hamilton Bank of Johnson City*, 473 US 172; 105 S Ct 3108; 87 L Ed 2d 126 (1985), that in an action under 42 USC 1983 for damages resulting from an unconstitutional regulatory taking, a decision of an administrative body must be "final" before it is judicially reviewable. The finality requirement " 'is concerned with whether *the initial decisionmaker has arrived at a definitive position on the issue* that inflicts an actual, concrete injury.'" *Electro-Tech, supra* at 81, quoting *Williamson, supra* at 192-193 (emphasis in original). Applying this requirement to the facts before it, in which the plaintiff alleged that the City of Westland had taken his property without just compensation when it imposed numerous conditions on his development, the *Electro-Tech* Court found that the plaintiff's claim was not ripe under circumstances because

In light of the circumstances surrounding the "conditional approval" of Electro-Tech's site plan, we are persuaded that the plaintiff had not yet completed the available procedures which might have enabled it to build according to the plans it had originally submitted for approval.

At the June 11, 1979, city council meeting, the council had imposed, in addition to the dedication requirement, four conditions for obtaining final site-plan approval and a subsequent building permit. Electro-Tech admits that none of the four additional conditions were objectionable, and, although it proceeded to remedy the deficiencies, it failed to submit a final site plan (either to the council or to the building department) reflecting at least those changes.

The record further indicates that although all of the city departments participate in the decision-making process, the ultimate decision regarding building requests lies with the building department. As stated previously, the building department is responsible for examining the final site and building plans (as well as the final report from the engineering department) and, if everything is approved, for ultimately issuing the building permit.

These facts, in our view, support the conclusion that the process for obtaining the city's permission to build had not yet been completed. The fact that

the council's approval was "conditional" indicates that the entire matter had not yet been finally resolved and Electro-Tech would have to submit an amended site plan before it could begin building. As indicated in *Williamson*, until all five of the council's objections, including the four "valid" conditions, are addressed and finally resolved (either by compliance or by refusal to comply), it is impossible to accurately determine the extent to which the plaintiff's land retained any reasonable beneficial use or the extent to which the plaintiff's expectation interest had been destroyed. [*Id.* at 83-85.]

See also *Paragon Properties Co v City of Novi*, 452 Mich 568, 576-580; 550 NW2d 772 (1996);² *Lake Angelo Associates v White Lake Twp*, 198 Mich App 65, 68-72; 498 NW2d 1 (1993).

Although *Electro-Tech* and the above-cited cases address the finality requirement in the unique context of claims raising constitutional challenges, i.e., "taking" cases, we conclude that the finality requirement, as defined by the *Williamson* Court, is equally applicable to the present circumstances where the "final" decision of defendant city council is, by constitutional mandate, subject to direct review by the courts. 1963 Const, Art VI, § 28. The basic rationale of the doctrine of ripeness which underlies the *Williamson* finality requirement, expressed in a similar but more generalized fashion, is "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by challenging parties." 2 Am Jur 2d, Administrative Law, § 485. Thus, in the present case, we review defendants' resolution to determine whether it reflects "a definitive position on the issue that inflicts an actual, concrete injury." *Williamson*, *supra* at 192-193.

The December 15, 1997, resolution denying plaintiff's application for a drilling permit states in pertinent part as follows:

² In *Paragon*, the plaintiff sought rezoning of property from a single-family residential to mobile home district and the defendant city council rejected its request. The plaintiff filed suit claiming that the zoning ordinance as applied to plaintiff's property effected an unconstitutional taking. *Id.* at 572. The *Paragon* Court examined whether the city council's denial of the plaintiff's request to rezone its property was a final decision appealable to the circuit court. Citing the *Williamson* finality requirement, the *Paragon* Court distinguished the facts before it from *Electro-Tech*, *supra*, because, although the rejection was not conditional, the plaintiff had not shown that the decision inflicted an actual, concrete injury. The plaintiff may have been eligible for alternate relief from the provisions of the ordinance because the zoning appeal board had the administrative authority to grant a variance where the zoning ordinance created a hardship. Therefore, the rejection of the plaintiff's rezoning request was not a final decision because it did not inflict an injury where the plaintiff could also seek a variance from the zoning appeal board. *Id.* at 578-583.

NOW, THEREFORE, BE IT RESOLVED:

1. The application of West Bay for the oil and gas well drilling at the site in question *be denied* for the following reasons: [nine grounds for denial cited]

* * *

2. *The application may be resubmitted* by West Bay, its successors or assigns at their pleasure. However, this Council believes, at a minimum, the following information would be necessary to determine whether the risk to the public health and safety may be minimized to a point that a permit may be granted:

a. A thorough comprehensive atmospheric dispersion model demonstrating the turbulent mixing of gases emerging from an accident or intentional release of hydrogen sulfide . . .

b. A thorough and comprehensive analysis of the techniques to be employed for hydrogen sulfide containment . . .

c. A thorough and comprehensive analysis of the safety of the pipeline proposed to transport the product to Plymouth Township. . . .

3. *In conjunction with any renewed application* for this site, or any site within the City which is proposed for oil and gas exploration, this Council would benefit from the submission of a Hydrocarbon Development Plan. . . . [Emphasis added.]

This resolution reflects a unanimous decision by defendant city council to deny plaintiff's application because the city council did not believe plaintiff supplied sufficient information addressing concerns related to the release of hydrogen sulfide. Without addressing the merits of that decision, which would be premature given the procedural posture of the case, we conclude that the resolution unequivocally denied plaintiff's application and constituted a "final order" under any meaningful definition of that phrase. The resolution states at paragraph 1, immediately following the statement "be it resolved," that the application is "denied." The fact that defendant provided for resubmission of the application with suggestions on other relevant information does not make the decision any less final; there is no language in paragraph 1 of the resolution that made denial of the permit conditional, indicated that the matter had been taken under advisement, or showed that the pending application remained before the city council for further deliberation. The resolution merely provided guidelines in the event of reapplication. We therefore conclude that defendant city council arrived at a definitive position on the merits of the pending application within the meaning of *Williamson, supra*.

Moreover, defendant does not argue that the decision did not inflict an actual injury and has suggested no alternate path for plaintiff to use its oil and gas lease. Oil, gas, and leasehold interests such as those held by plaintiff in the instant case are viable property interests with a value derived from the ability to produce the oil and gas. Denial of permits to drill for and

produce oil and gas consequently cause actual and concrete injury to the holder of such interests, so much so that such denials have been held to be unconstitutional takings of property. See *Miller Bros v Dep't of Natural Resources*, 203 Mich App 674, 680; 513 NW2d 217 (1994). In the present case, plaintiff thus suffered an actual and concrete injury as a result of the definitive denial of the permit by the city. *Williamson, supra*.

In sum, we conclude that the December 15, 1997, resolution denying plaintiff's application for a drilling permit constituted a final decision of the city council which was ripe for review by the circuit court. The circuit court therefore erred in denying review under the circumstances.

Reversed and remanded to the circuit court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins