RENDERED: OCTOBER 30, 2026; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1380-MR

LAMPTON SECURITIES
PARTNERSHIP, LLP — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JESSICA E. GREEN, JUDGE
ACTION NO. 20-CI-003017

LOUISVILLE-JEFFERSON COUNTY
METRO GOVERNMENT AND
METROPOLITAN SEWER DISTRICT — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, EASTON, AND L. JONES, JUDGES.

JONES, L., JUDGE: Lampton Securities Partnership (Lampton) appeals from the Jefferson Circuit Court's order granting summary judgment to Louisville-Jefferson County Metro Government (Metro Government) and the Metropolitan Sewer District (Metro Sewer) in this reverse condemnation action. We affirm.

In the early 1990s, the owners of a roughly four-acre tract along the Ohio River received approval from Metro Sewer to construct condominiums. The plan approved by Metro Sewer contained two phases of construction.[1] Though it is uncontested that the owners received approval of the plan, the actual permit is not in the record. Phase One was completed on roughly two acres. The remaining two

[1] Metro Government and Metro Sewer seem to dispute both phases were approved. But the deposition testimony of Metro Sewer's designated representative indicates that both were approved:

> Q. Okay. So [Metro Sewer] approved the construction plans—
>
> A. Yeah, that was back in '92.
>
> Q. Back in '92. Okay. And do you recall what those plans entailed?
>
> A. They showed a condo, a large condo complex. It had a Phase 1 and a Phase 2. Phase 1 was the only one that was built.
>
> Q. Right. But both phases were approved.
>
> A. They were both shown on the plan.
>
> Q. They were both shown on the plan.
>
> A. (Nods head affirmatively)
>
> Q. It was a total of four acres, and that was the development that was approved by [Metro Sewer] in 1992 or '93, correct?
>
> A. '92, yes.
>
> Q. In '92. So there is no question that [Metro Sewer] approved the development of both tracts of land in 1992, correct?
>
> A. It appeared to be a single tract on the plans that we have.

Trial Court Record (TR) at 628.

acres (Tract) were the planned location for Phase Two. A building to house electrical equipment was erected on the Tract, and utility lines were put in place. However, no condominiums were built on the Tract.

Meanwhile, in 1997, the Metro Government enacted floodplain ordinances in response to catastrophic flooding. Essentially, the ordinances prevent most types of new construction on land within the "conveyance zone" portion of the floodplain. The Tract is within the conveyance zone.

However, the ordinances have two relevant exceptions. First, they permit the continuation of construction which had already begun before the ordinances were adopted. Second, an impacted landowner is permitted to seek a variance from Metro Sewer's Floodplain Board (Board).[2] The record contains evidence of variances the Board has granted to other landowners.

[2] In relevant part, § 157.03(A)(1) provides that "[n]o development . . . shall occur in the local regulatory conveyance zone except as approved in a permit issued by the administering agency" but subsection (C)(8) allows the continuation of a nonconforming use "which was lawful on the effective date of this chapter . . . ." Ordinance § 157.04(B) provides that the Board "may grant" a "specific variance from the individual provisions of § 157.03 . . . ."

Metro Government's official website contains a hyperlink leading to the American Legal Publishing Company's website, where the entirety of local ordinances and code provisions may be viewed. *See* https://louisvilleky.gov/government/codes-regulations/local-ordinances (last visited Oct. 2, 2026). The ordinances quoted above thus may be viewed at https://codelibrary.amlegal.com/codes/louisvillemetro/latest/loukymetro/0-0-0-17164#JD_157.03 (last visited Oct. 2, 2026). We used the same method to view another municipality's ordinances in *Schell v. Young*, 640 S.W.3d 24, 30 n.2 (Ky. App. 2021).

In 1998, after the enactment of the floodplain ordinances, Lampton purchased the Tract for $800,000.00. The Tract sat idle until Lampton placed it on the market around 2019. The marketing materials asserted that the Tract could be commercially developed. Metro Sewer personnel somehow learned the Tract was for sale and a meeting eventually occurred between Metro Sewer's counsel and Lampton. At that meeting, Metro Sewer's counsel opined that the floodplain ordinances prevented development of the Tract.

Lampton neither sought a variance nor attempted to begin the construction of Phase Two (in reliance upon the previously granted permit). Instead, in May 2020, Lampton filed this reverse condemnation action against Metro Sewer and Metro Government. The complaint asserts Lampton "lost all economically beneficial uses" of the Tract because of the enactment and enforcement of the floodplain ordinances. TR at 9.

After protracted discovery and vigorous motion practice, the trial court granted summary judgment to Metro Sewer and Metro Government in July 2025. Though the parties had raised additional arguments, the trial court's decision was based on two conclusions. First, the court concluded that Lampton had failed to exhaust its administrative remedies. Second, the court concluded the complaint had not been timely filed. After the court denied its motion to alter, amend, or vacate, Lampton filed this appeal.

Kentucky's familiar summary judgment standards are:

> In considering a motion for summary judgment, a trial court must view the record in a light most favorable to the non-moving party, resolving all doubts in its favor. *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). The trial court may grant summary judgment only if it concludes that no disputed issues of material fact exist for trial. *Id*. On appeal of a summary judgment, we must determine whether the trial court correctly found that the moving party was entitled to a judgment as a matter of law. *Id*. Because summary judgment involves questions of law, we need not defer to the trial court's conclusions; accordingly, we review the record de novo. *Blevins v. Moran*, 12 S.W.3d 698, 700-01 (Ky. App. 2000).

Waugh v. Parker, 584 S.W.3d 748, 750–51 (Ky. 2019).

Of course, under settled Kentucky precedent, "[i]f an appellate court is aware of a reason to affirm the lower court's decision, it *must* do so, even if on different grounds." *Mark D. Dean, P.S.C. v. Commonwealth Bank & Tr. Co.*, 434 S.W.3d 489, 496 (Ky. 2014) (emphasis added). Pursuant to that principle, after examining the record and applicable law, we conclude that Metro Sewer and Metro Government are entitled to summary judgment because Lampton's claims are not ripe.

Under §§ 13 and 242 of the Kentucky Constitution and the Fifth Amendment to the United States Constitution, "the government may not take a citizen's private property without providing just compensation." *Farmers Nat'l Bank v. Commonwealth Dep't of Revenue*, 486 S.W.3d 872, 883 (Ky. App. 2015).

The classic version of a taking occurs when the government seizes property for its own use. *See, e.g.*, *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001) ("The clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use.").

However, there is another type of governmental taking variously referred to as a reverse taking, an inverse taking, an inverse condemnation, or a regulatory taking. "Inverse condemnation is the term applied to a suit against a government to recover the fair market value of property which has in effect been taken and appropriated by the activities of the government when no eminent domain proceedings are used." *Commonwealth, Nat. Res. and Env't Prot. Cabinet v. Stearns Coal and Lumber Co.*, 678 S.W.2d 378, 381 (Ky. 1984). As the United States Supreme Court has described it, "there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs" because the applicable governmental regulation "goes too far. . . ." *Palazzolo*, 533 U.S. at 617 (internal quotation marks and citations omitted). A governmental regulation "goes too far" when it "denies all economically beneficial or productive use of land. . . ." *Id*. (internal quotation marks and citations omitted). That is what Lampton asserts occurred here.

But "[a] court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes." *MacDonald, Sommer & Frates*

v. Yolo Cnty., 477 U.S. 340, 348 (1986). Thus, as the Supreme Court has explained:

> a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established.

Palazzolo, 533 U.S. at 620–21. The Supreme Court further stated that "[u]ntil a property owner has obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, it is impossible to tell whether the land retain[s] any reasonable beneficial use or whether [existing] expectation interests ha[ve] been destroyed." *Yolo County*, 477 U.S. at 349. (internal quotation marks and citations omitted).

The Supreme Court has explained that a case is not ripe until a "final decision" has been made because the entities who enforce local land-use policies possess a "high degree of discretion" to grant exceptions to those policies, so "a sound judgment about what use will be allowed simply cannot be made by asking whether a parcel's characteristics or a proposal's details facially conform to the terms of the general use regulations." *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 739 (1997). In plain English, a takings claim is not ripe "if avenues still

remain for the government to clarify or change its decision." *Pakdel v. City and Cnty. of San Francisco, California*, 594 U.S. 474, 480 (2021).

Although those Supreme Court decisions were based on federal law and the United States Constitution, the same general ripeness principles apply under Kentucky law. For example, our Supreme Court applied ripeness principles to a reverse condemnation claim brought under Kentucky law in *Spanish Cove Sanitation, Inc. v. Louisville-Jefferson County Metropolitan Sewer District*, 72 S.W.3d 918 (Ky. 2002). In *Spanish Cove Sanitation*, the owner of a wastewater treatment facility filed a reverse condemnation action when Metro Sewer had merely "planned to tie into the pipe system that served [the wastewater treatment facility's] customers." *Id.* at 919. In other words, the plaintiff filed suit based on only a plan, without Metro Sewer having actually "tied into" the plaintiff's sewer lines. *Id*.

Our Supreme Court held the suit was not ripe:

> At the outset, we should note that the trial court did not abuse its discretion in determining that the issue was not ripe. Under Kentucky law, before a plaintiff can make a claim of inverse condemnation, there must be an actual taking. *Holloway Const. Co. v. Smith*, Ky., 683 S.W.2d 248, 249 (1984). In *Associated Industries of Kentucky v. Commonwealth*, Ky., 912 S.W.2d 947 (1995), we held that Kentucky courts cannot grant advisory opinions or rule on hypothetical questions, but rather must rule on real disputes. At the time this action was filed, nothing had even arguably been taken.

Spanish Cove Sanitation, Inc., 72 S.W.3d at 921.

Here, Lampton has not obtained a final decision from the Board outlining how the Tract may be used. Lampton stresses the oral opinion given by a Metro Sewer staff member. But that staff member was not a final decision maker regarding the permitted uses for the Tract. Lampton did not attempt to begin building the condominiums called for in Phase Two (in reliance on the previously granted permit) only to be stymied by local authorities; nor did Lampton seek a variance. Instead, like the wastewater owner in *Spanish Cove Sanitation*, Lampton rushed to file a premature suit before an actual taking occurred.

We do not know whether Lampton would, or would not, be able to build the Phase Two condos or make other economically beneficial usage of the Tract. There simply is no final decision by the relevant local authorities outlining the Tract's permitted uses. Therefore, these takings claims are not ripe.

We also reject Lampton's argument that it would be futile to seek a variance. Generally, "[i]n a regulatory takings case, the question of finality and ripeness is subject to a showing of futility." 27 AM. JUR. 2D *Eminent Domain* § 705 (August 2026 Update). But the futility exception to the ripeness doctrine is narrow. *See, e.g.*, *Nenninger v. Village of Port Jefferson*, 509 Fed. App'x 36, 38 (2d Cir. 2013); *McGuire v. United States*, 97 Fed.Cl. 425, 433 (Fed. Cl. 2011). The illustration of this point by a federal court in New York is memorable:

> It is true that the ripeness doctrine does not require [plaintiff] to jump through a series of hoops, the last of which it is certain to find obstructed by a brick wall, but the presence of that brick wall must be all but certain for the futility exception to apply. There must be evidence that the relevant governmental body has no discretion to grant an exemption, or that it has dug in its heels and made clear that all such applications will be denied.

Ecogen, LLC v. Town of Italy, 438 F. Supp. 2d 149, 160–61 (W.D.N.Y. 2006) (brackets in *Town of Italy*) (internal quotation marks and citations omitted). *See also, e.g.*, 27 AM. JUR. 2D *Eminent Domain* § 705 (August 2026 Update).

Lampton has not shown the existence of an impenetrable brick wall of futility. Metro Sewer's general counsel's good-faith statement of opinion that the floodplain ordinances would prevent development on the Tract, however adamantly expressed, is insufficient to show it would have been futile for Lampton to seek a variance. Even if we accept that the Tract is in the conveyance zone and thus development on it is generally not permitted, Ordinance § 157.04(B) allows the Board, not Metro Sewer's staff, to grant a variance. And the record contains evidence of previous variances granted by the Board, TR at 398–424, so we cannot accept Lampton's assertion that an application for a variance would face "certain rejection" simply because a Metro Sewer staff member believed the floodplain ordinances prevented development of the Tract. Consequently, we reject Lampton's self-serving speculation that the Board would reflexively, inevitably refuse to grant Lampton a variance. As Metro Sewer's designated employee

testified at her deposition, it is impossible to know with reliable precision whether the Board would grant a variance allowing the Tract to be developed because no similar variance had ever been requested.[3]

Under Kentucky law, an unripe claim is non-justiciable. *Graham v. Adams*, 684 S.W.3d 663, 676 (Ky. 2023) (emphasis omitted). We therefore

---

[3] Lori Rafferty, Metro Sewer's designated representative, testified as follows in her deposition:

> Q. So there's no chance [Metro Sewer] is going to allow development on [the Tract], is there?
>
> A. It would be up to the board. The staff can't decide. The way that it's written is staff has to say that it's not allowed and that a variance would be required if they want to request building.
>
> . . .
>
> Q. Okay. Any condominium or apartment developments that have been built in the conveyance zone that [Metro Sewer] has given permits for that you know of?
>
> A. I'm not aware of any.
>
> Q. I mean, as a practical matter, [Metro Sewer] is just not going to do that, correct?
>
> A. I can't say, because it's up to the board to decide.
>
> Q. But as far as you know, the board has never approved any requests for –
>
> A. Well, they've never been asked.
>
> Q. As far as you know, they've never been asked.
>
> A. I don't—I'm not aware of any condominiums that have been requested in a conveyance zone.

TR 384, 386-87. Lampton points to no specific evidence contradicting that testimony.

discern no error in the trial court's decision to grant summary judgment to Metro Government and Metro Sewer on Lampton's non-justiciable reverse condemnation claims.[4]

We have examined the parties' briefs but conclude it is unnecessary for us to address the remainder of the arguments and authorities raised therein. *See Schell*, 640 S.W.3d at 29 n.1. We express no binding opinion on those arguments.

For the foregoing reasons, the Jefferson Circuit Court is affirmed.

ALL CONCUR.

[4] As to Lampton's insistence that, at a minimum, the trial court should have dismissed its claims without prejudice, we note that the trial court properly stated in the order denying Lampton's motion to alter, amend, or vacate, that Lampton may bring a future takings claim, provided that claim is ripe and is otherwise justiciable. We express no opinion on that hypothetical future claim, nor any potential defenses thereto.

BRIEFS FOR APPELLANT:

Michael D. Risley
Louisville, Kentucky

BRIEF FOR APPELLEE
LOUISVILLE-JEFFERSON
COUNTY METRO GOVERNMENT:

Natalie Johnson
Laura Ferguson
Louisville, Kentucky

BRIEF FOR APPELLEE
LOUISVILLE AND JEFFERSON
COUNTY METROPOLITAN
SEWER DISTRICT:

Philip M. Longmeyer
Louisville, Kentucky