

COURT OF APPEAL RULES THAT DENIAL OF A LANDOWNER'S APPLICATION TO DEVELOP PROPERTY CAN BE A COMPENSABLE REGULATORY TAKING

Avenida San Juan Partnership v. City of San Clemente, No. G043479, consol. with G043534 (Cal. Ct. App. 4th Dist., December 14, 2011.)

January 6, 2012 by *Michael Hansen and Keith Garner*

The Fourth Appellate District recently held that a local agency's denial of an application to develop a 2.85 acre parcel in the middle of a developed residential area can constitute a compensable regulatory taking under the *Penn Central Transp. Co. v. City of New York* (1978) 438 U.S. 104 ("*Penn Central*") case. After a group of neighbors requested that the City make the property open space, the City imposed a "residential, very low" ("RVL") zoning designation, limiting development on the property to one dwelling unit per 20 acres. The previous zoning allowed six dwelling units per acre, and all surrounding property allowed four dwelling units per acre. The owner filed an application with the City for a general plan amendment and zoning amendment, among other permits, to build four dwelling units on the property. After staff and the planning commission recommended denial of the application, the City Council denied the application.

The owner filed a claim in federal court alleging spot zoning and inverse condemnation, and then filed an action in state court and dismissed the federal action. The parties agreed to an order bifurcating the trial, so the writ of mandate claim regarding spot zoning was heard separately from the inverse condemnation claim. In the writ of mandate phase, the trial court found that the RVL zoning was arbitrary and capricious as applied to the property, because it was an island in an ocean of less restrictive zoning, and in practicality the property had been zoned as open space and there was evidence that the City intended it to be open space. In the inverse condemnation phase, the trial court issued a judgment finding that the City had deprived the owners of all economically viable use of the property and rejected the City's reasons for zoning the property RVL. The City appealed both trial court judgments.

Spot Zoning

The court affirmed the trial court's finding that the downzoning and the City's refusal to consider rezoning the property were arbitrary and capricious. The court stated that there was no question that the City engaged in spot zoning because the zoning maps in the record readily provided substantial evidence, showing higher density development encircling the property. The court concluded that there were no unique facts calling for the property to remain a land-locked island of low density zoning, noting that the terrain and grading constraints were similar to surrounding areas.

Inverse Condemnation

The Court of Appeal affirmed the trial court's holding that an inverse condemnation existed, but on different grounds. The trial court found that there was a complete taking because the City denied the owner all economically viable use of the property, as in the landmark *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003 ("*Lucas*") case. The trial court also made findings under *Penn Central*.

The Court of Appeal determined that there was no complete taking under *Lucas* because there was no substantial evidence that the city would not approve any development on the property and that development of one home on the property was not feasible. Instead, the court applied the *Penn Central* factors to the City's denial of the owner's application for four homes. The court held that the three core *Penn Central* factors favored a finding of taking. First, the economic effect was dramatic because the trial court arrived at a valuation difference of \$1.3 million between the property valued if four homes could be built versus the zero value the judge found under the RVL zoning. In addition, the court found that the regulation wholly undermined the investment-backed expectations of the owner because when they purchased the property it was zoned for higher density. In addition, the court held that the character of the governmental action was an irrational discrimination because the City was largely motivated by a desire to keep the property as open space.

The court found that some of the "minor" *Penn Central* factors also pointed to a taking, including that the parcel was singled out for unequal treatment, there was evidence that the neighbors simply wanted the property as open space, the City did not seriously consider mitigation measures in turning down the application, and the best use of the land is consistent with the density of the surrounding neighborhood.